



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 20, 2002

Ms. Beverly West Irizarry
Gale, Wilson & Sanchez
115 East Travis, Suite 618
San Antonio, Texas 78205

OR2002-7354

Dear Ms. Irizarry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174179.

The Alamo Community College District (the "district"), which you represent, received a request for (1) chancellor Robert Ramsay's cellular telephone bills from September 1, 2001 to October 3, 2002; (2) police reports relating to the confiscation of district property from Robert "Tinker" Garza on August 20, 2002; and (3) certain types of documents stored on a laptop computer that was issued to Robert "Tinker" Garza. You state that the district has no responsive documents that were stored on the computer. Chapter 552 of the Government Code does not require the district to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You indicate that a prior open records letter ruling addresses some of the information that is responsive to the first part of the request. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

First, we address your statement that some of the information at issue is the subject of a prior open records letter ruling. Open Records Letter No. 2002-6111 (2002) addresses a request for, among other things, chancellor Robert Ramsay's "cell phone records . . . going back five

¹This letter ruling assumes that the submitted representative sample information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

years (1997-2002).” You do not inform us, nor are we aware of any change, in the law, facts, or circumstances on which the prior ruling is based. Therefore, to the extent that the present request for information encompasses the cellular telephone bills that are the subject of the prior ruling, the district may continue to rely on Open Records Letter No. 2002-6111 (2002) with regard to that information. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov’t Code § 552.301(a) when (1) precisely same records or information previously were submitted under Gov’t Code § 552.301(e)(1)(D); (2) same governmental body previously requested and received ruling; (3) prior ruling concluded that same records or information are or are not excepted from disclosure; and (4) law, facts, and circumstances on which prior ruling was based have not changed).

Next, we address your claims with respect to the cell phone bills that are not encompassed by Open Records Letter No. 2002-6111 (2002). Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that the Texas Supreme Court deemed to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other subjects also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing types of information attorney general has found to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

You indicate that the remaining cell phone bills contain the telephone numbers of the chancellor’s personal physicians. You assert that such telephone numbers constitute private information. We conclude, however, that the telephone numbers of the chancellor’s physicians are not excepted from disclosure under section 552.101 in conjunction with common-law privacy. *See also* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person’s home address and telephone number is not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as intimate aspects of human affairs).

Section 552.117(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be

kept confidential under section 552.024. Whether section 552.117 protects a particular item of information must be determined at the time that the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. In a case of a person who timely requested confidentiality under section 552.024, the district must withhold the person's current and former home addresses and telephone numbers, social security number, and any information that reveals whether the person has family members. The district may not withhold the section 552.117 information of an official or employee who did not make a timely election under section 552.024 to keep the information confidential.

You state that the remaining cell phone bills contain highlighted home telephone numbers and other section 552.117 information that the chancellor has elected to keep confidential under section 552.024. We first note that the cell phone bills indicate that the district pays for the chancellor's cell phone service. A cell phone number that is provided to the chancellor at public expense may not be withheld from disclosure under section 552.117. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use). With regard to the rest of the cell phone information that you seek to withhold under section 552.117, you do not state whether the chancellor had made his section 552.024 election when this request for information was received. Therefore, we conclude that to the extent that the highlighted information in the cell phone bills consists of personal telephone numbers that are not paid for by the district, the highlighted information is excepted from disclosure under section 552.117(1) if the chancellor timely elected to keep that information confidential under section 552.024.

You also raise section 552.136 of the Government Code with regard to the cell phone bills. This exception is applicable to certain account numbers. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The district must withhold the chancellor's cell phone account number under section 552.136. We have marked that information.

Lastly, we address your claim under section 552.108 of the Government Code with regard to the information that is responsive to part two of the request. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded criminal investigation that did not result in a conviction or a deferred adjudication.

You indicate that the district's police department created and holds the information that is responsive to part two of this request. You state that this information did not result in a conviction or deferred adjudication. You do not state, however, and it is not otherwise clear to this office that the information in question relates to a concluded criminal investigation. Thus, the district has not demonstrated that the information that is responsive to part two of the request is excepted from disclosure under section 552.108 of the Government Code.

In summary, the district may continue to rely on Open Records Letter No. 2002-6111 (2002) with regard to the requested cellular telephone bills that are encompassed by the prior ruling. Personal telephone numbers in the rest of the cell phone bills that are not paid for by the district are excepted from disclosure under section 552.117 of the Government Code if the chancellor timely elected to keep that information confidential under section 552.024. The chancellor's cell phone account number is excepted from disclosure under section 552.136. The rest of the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

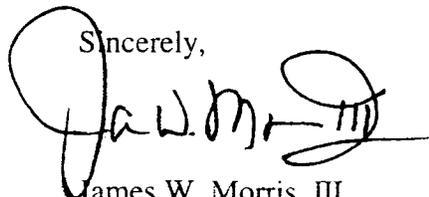
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', written over a large, stylized circular flourish.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 174179

Enc: Submitted documents

c: Mr. John Tedesco
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(w/o enclosures)