



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 26, 2003

Mr. David K. Walker
County Attorney
Montgomery County
210 West Davis, Suite 400
Conroe, Texas 77301

OR2003-2057

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178439.

The Montgomery County Auditor (the "auditor") received a written request for, among other things, the itemized cellular telephone bills for cellular telephones issued to County Commissioner Ed Rinehart, District Attorney Mike McDougal, and Sheriff Guy Williams for the months of January 2002 to the present.¹ You contend that the telephone numbers assigned to the cellular telephones and the numbers called on those telephones, a sample of which you have submitted to this office for review, are excepted from required disclosure pursuant to section 552.108(b)(1) of the Government Code.²

Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law-enforcement agency that is maintained for internal use in matters relating to

¹You state that the auditor has released information responsive to the request for attorney fee bills from the law firm of Olson & Olson.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 2002 WL 31026981 (Tex. App.--Austin, Sept. 12, 2002) (No. 03-02-00074-CV). To claim this aspect of section 552.108, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

This office has previously determined that the cellular telephone numbers assigned to county officials and employees with specific law enforcement responsibilities are excepted from required public disclosure pursuant to section 552.108. *See* Open Records Decision No. 506 (1988) (applying predecessor statute). After considering your arguments, we conclude that you have demonstrated that the cellular telephone numbers assigned to the county commissioner, the district attorney, and the sheriff may be withheld from the requestor pursuant to section 552.108(b)(1).

We now address the extent to which the portions of the telephone bills that reveal telephone numbers that were called by the county commissioner, district attorney, and sheriff are excepted from public disclosure. We first note that to the extent the itemized telephone bills reveal the county telephone number of other county officials and employees with specific law-enforcement responsibilities, those telephone numbers are excepted from public disclosure pursuant to section 552.108(b)(1). *See* Open Records Decision No. 506. We additionally note that to the extent that the itemized telephone bills contain the home telephone number of a “peace officer” as defined by article 2.12 of the Code of Criminal Procedure or the home telephone number of a current or former county official or employee who has timely requested that this information be kept confidential under section 552.024 of the Government Code, that telephone number must be withheld from the public pursuant to section 552.117 of the Government Code. *See* Open Records Decision No. 636 at 4-5 (1995). *But see* Open Records Decision No. 530 (1989) (governmental body may not withhold home telephone number of civilian official or employee who has not elected to keep this information private at time request for information is received by governmental body).

You seek to withhold the remaining telephone numbers listed in the telephone bills issued to the district attorney and the sheriff pursuant to section 552.108(b)(1) because the bills

“might have the phone number of a witness or a confidential informant that could interfere with law enforcement or prosecution.” You have not, however, identified any such telephone number in the submitted records. This office has previously concluded that

a cellular telephone bill does not explain on its face how its release would unduly interfere with law enforcement and crime prevention. Therefore, to claim the [law-enforcement] exception for this information, a governmental body must do two things: (1) mark the information it claims would tend to identify a confidential informant or would unduly interfere with law enforcement and crime prevention if released, and (2) detail how release of that marked information would identify the informant or unduly interfere with law enforcement. Without this information, the governmental body will not have met its burden under [the statutory predecessor to section 552.108]. A generalized explanation is insufficient; the governmental body’s argument must be addressed to the particular records requested or the portions of those particular records for which the governmental body is claiming the [law-enforcement] exception. Open Records Decision No. 434 (1986).

Open Records Decision No. 636 at 4 (footnotes omitted). Because you have provided this office with no arguments as to why any of the remaining telephone numbers contained in the submitted records would interfere with law enforcement, we conclude that you have not met your burden under section 552.108 with regard to those telephone numbers. Accordingly, we conclude that the remaining portions of the submitted telephone bills must be released to the requestor, with the following exception.

We note that the submitted cellular telephone bills contain an account number. Section 552.136 of the Government Code makes certain account numbers confidential and provides in relevant part:

(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. We therefore conclude that the commission must withhold the account numbers in the submitted records, which we have marked, pursuant to section 552.136 of the Government Code.

In summary, the county auditor may withhold pursuant to section 552.108(b)(1) the cellular and other county telephone numbers of county officials and employees with specific law-enforcement responsibilities, including the cellular telephone numbers of the county commissioner, the district attorney, and the sheriff. Home telephone numbers of county officials and employees who have timely elected to have this information withheld from the public, as well as the home telephone numbers of all "peace officers," must be withheld pursuant to section 552.117. The county auditor must also withhold the account number contained in the cellular telephone bills pursuant to section 552.136. The remaining information contained in the requested cellular telephone bills must be released to the requestor.

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 Dep't of Pub. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/RWP/seg

Ref: ID# 178439

Enc: Submitted documents

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