



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2004

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2004-8832

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211019.

The Department of Public Safety (the "department") received a request for cellular telephone records pertaining to a named department officer. You have released some of the information to the requestor. You state that you have redacted the home telephone numbers of department officers and their families in accordance with the previous determination given in Open Records Decision No. 670 at 6 (2001) (all governmental bodies covered by the Public Information Act may withhold home telephone numbers of peace officers and information that reveals whether the peace officer has family, without the necessity of requesting an Attorney General decision as to whether section 552.117 applies). You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, you assert that the submitted information is not subject to disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

We note that the submitted information consists of itemized cellular telephone bills. You explain that the submitted information corresponds to the cellular telephone number assigned to a department officer to carry out his duties. We conclude that the submitted bills are “information in an account, voucher, or contract relating to the . . . expenditure of public funds,” and therefore, as prescribed by section 552.022, the bills must be released to the requestor unless they are expressly made confidential under other law. *See* Gov’t Code § 552.022(a)(3). You argue that the cellular telephone numbers assigned to the Governor’s Protective Detail (GPD) and agents of the United States Department of State Bureau of Diplomatic Security (BDS) and the telephone number for the GPD Command Post are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We note, however, that section 552.108 is a discretionary exception under the Public Information Act (the “Act”), and, as such, does not make information confidential for purposes of section 552.022.¹ *See* Open Records Decision No. 586 (1991) (governmental body may waive section 552.108). Accordingly, we conclude that the department may not withhold the submitted information under section 552.108 of the Government Code.

Section 552.101 of the Government Code constitutes other law for purposes of section 552.022; therefore, we will consider the applicability of this exception to the submitted information.² Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information that is encompassed by the common-law right to privacy. *See* Gov’t Code § 552.101; *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Ordinarily, information is protected from disclosure under the common-law right to privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *See id.*

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body’s position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute “other law” that makes information confidential.

²Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. The department did not submit its section 552.101 comments within fifteen business days. While the information at issue is therefore presumed public pursuant to section 552.302 of the Government Code, the applicability of section 552.101 in conjunction with common-law privacy constitutes a compelling reason to overcome this presumption. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

at 685. This office has also recognized that the release of personal information can constitute “a clearly unwarranted invasion of personal privacy” under “special circumstances.” Open Records Decision No. 123 (1976). In Open Records Decision No. 169 (1977), we considered the personal safety concerns of public employees and recognized that there may be specific instances where “special circumstances” exist to except from public disclosure some of the employees’ addresses. *See* Open Records Decision No. 123 (1976). In that decision, the employees demonstrated that their lives would be placed in danger if their addresses were released to the public. ORD 169 at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* at 6.

You argue that “the privacy rights [of] prominent government officials, whether local or foreign, include the right to be safe from physical harm.” You explain that the telephone numbers you seek to withhold are assigned to members of the GPD or BDS whose job is to provide security for the governor or foreign dignitaries. You claim that the release of these numbers, as well as the GPD Command post number, would impair GPD and BDS officers’ “ability to communicate concerning matters critical to the safety of both foreign dignitaries and the governor.” You also claim that the release of the GPD and BDS cellular telephone numbers would make it possible for members of the public to identify which officers are assigned to the GPD and BDS by calling their telephones. You inform us that “the department has already disclosed all fiscal information appearing on the requested phone bills,” and state “there does not appear to be any other significant interest at stake and particularly not one sufficiently important to overcome an individual right to personal safety.” In this situation, we believe that you have shown that release of the GPD and BDS telephone numbers would compromise the security provided for the governor and foreign dignitaries and therefore subject them to an imminent threat of physical danger. Accordingly, the department must withhold the telephone numbers highlighted in yellow from disclosure pursuant to section 552.101.

We note that the submitted cellular telephone records contain an account number that is subject to section 552.136 of the Government Code.³ Section 552.136 is other law for purposes of section 552.022 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

³The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

The department must withhold the account number information that we have marked in the submitted cellular telephone records pursuant to section 552.136 of the Government Code.

In summary, the department must withhold the telephone numbers highlighted in yellow under section 552.101 of the Government Code in conjunction with common-law privacy. The account number must be withheld under section 552.136 of the Government Code.

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).

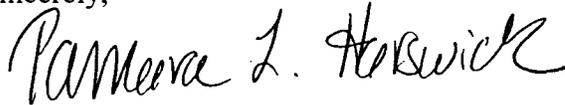
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 211019

Enc. Submitted documents

c: Mr. Thomas Williams
2305 Hayfield Square
Pflugerville, Texas 78660
(w/o enclosures)