



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2008

Ms. Kimberly Drysdale
City Secretary
City of Ingleside
P.O. Drawer 400
Ingleside, Texas 78362

OR2008-08153

Dear Ms. Drysdale:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 313055.

The City of Ingleside (the "city") received a request for September 2007 cellular telephone records pertaining to four named city police department officers. You state that you have no information regarding one of the named officers.¹ You also state that you have released some information to the requestor, but claim that some of the remaining requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have marked information as not responsive to the instant request for information. The city need not release non-responsive information in response to this request and this ruling will not address that information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²Although you raise section 552.1175, we note that the correct exception to raise for information pertaining to individuals employed by the city is section 552.117.

Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” *Id.* at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You inform us that the submitted information contains the cellular telephone numbers of officers of the city’s police department. We understand you to assert that the release of these cellular telephone numbers would interfere with law enforcement and crime prevention. Based on your representations and our review of the information at issue, we conclude that the city may withhold the submitted cellular telephone numbers of city police department officers under section 552.108(b)(1) of the Government Code.

Next, we address your argument that some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). We note that section 552.117(a)(2) also encompasses personal cellular telephone and pager numbers, only if the cellular telephone or pager service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001). Thus, if the submitted cellular telephone bills contain the home or personal cellular telephone numbers of peace officers, then the city must withhold this information under section 552.117(a)(2) of the Government Code.

We note that the remaining submitted information contains account numbers that are subject to section 552.136 of the Government Code.³ Section 552.136 states that “[n]otwithstanding

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

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 city must, therefore, withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, the city may withhold the submitted cellular telephone numbers belonging to city police department officers pursuant to section 552.108(b)(1) of the Government Code. If the submitted cellular telephone bills contain the home or personal cellular telephone numbers of peace officers, then the city must withhold this information under section 552.117(a)(2) of the Government Code. The city must withhold the information we have marked pursuant to section 552.136 of the Government Code. The remaining responsive information 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

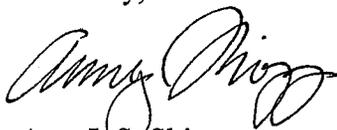
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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. 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 313055

Enc. Submitted documents

c: Ms. Shannon W. Locke
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417 San Pedro Avenue
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(w/o enclosures)