



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2008

Ms. Melissa C. Killen  
Tuggey, Rosenthal, Pauerstein,  
Sandoloski & Agather, L.L.P.  
755 East Mulberry, Suite 200  
San Antonio, Texas 78212

OR2008-12190

Dear Ms. Killen:

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# 320950.

The City of Hondo (the "city"), which you represent, received a request for the following three items of information: 1) all e-mails and documented forms of communication between three named councilmen since they took office, 2) all e-mails and documented forms of communication between the councilmen, city attorney, prosecutor, and bond counsel, and 3) cellular telephone and text message records of the three councilmen for the same time period. You state that you have released all e-mails responsive to items one and two of the request. You also state that there are no documents responsive to the portion of items one and two of the request regarding documented forms of communication.<sup>1</sup> You claim that the remaining requested information is not subject to the Act. We have considered your claim.

The Act applies to "public information," which is defined under section 552.002 as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when the request was received or to create new information responsive to the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Gov't Code § 552.002; *see also id.* § 552.021. You explain that the personal cellular telephones at issue “were not purchased with public funds and the phone bill and text message records generated by their use are not paid with public funds.” You further state that the councilmen do not receive any reimbursement or allowance from the city for use of the personal cellular telephones. Finally, you state that the personal cellular telephone records are never sent to the city and that the city does not own or have a right of access to the personal cellular telephone and text message bill records. Based on your representations, we agree that the personal cellular telephone and text message records at issue are not “public information” under the Act because the records are not collected, assembled, or maintained by or for the city. *See id.* § 552.002. Therefore, the city need not release the requested personal cellular telephone and text message records.

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). If the governmental body does not file suit over 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,

A handwritten signature in black ink, appearing to be "B. Diener", written in a cursive style.

Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 320950

Enc. Submitted documents

c: Mr. Jesse Blanchard  
Medina Valley Times Newspaper  
501 Madrid Street  
Castroville, Texas 78009  
(w/o enclosures)