



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2009

Mr. Brandon Cook
Legal Assistant
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR2009-07608

Dear Mr. Cook:

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# 344945 (ORR 09-117).

The City of Galveston (the "city") received a request for the summary pages of the January 2009 cellular telephone bill for the city. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code is applicable to the submitted information. 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[.]

Gov't Code § 552.022(a)(3). The submitted telephone bill constitutes information in an account relating to the expenditure of public funds by a governmental body. Thus, pursuant to section 552.022(a)(3), the city may only withhold the submitted information if it is confidential under other law. You argue that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. Section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the city may not withhold any of the submitted information under section 552.108. However, because sections 552.101 and 552.136 of the Government Code constitute "other law" for purposes of section 552.022, we will consider your arguments against disclosure of the submitted information under those sections.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 1039 of title 18 of the United States Code addresses fraud and related activity in connection with obtaining confidential phone records information, and provides in pertinent part:

(b) Prohibition on sale or transfer of confidential phone records information.--

(1) Except as otherwise permitted by applicable law, whoever, in interstate or foreign commerce, knowingly and intentionally sells or transfers, or attempts to sell or transfer, confidential phone records information of a covered entity, without prior authorization from the customer to whom such confidential phone records information relates, or knowing or having reason to know, such information was obtained fraudulently, shall be fined under this title, imprisoned not more than 10 years, or both.

...

(c) Prohibition on purchase or receipt of confidential phone records information.--

(1) Except as otherwise permitted by applicable law, whoever, in interstate or foreign commerce, knowingly and intentionally purchases or receives, or attempts to purchase or receive, confidential phone records information of a covered entity, without prior

authorization from the customer to whom such confidential phone records information relates, or knowing or having reason to know such information was obtained fraudulently, shall be fined under this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 1039(b)(1), (c)(1). For purposes of section 1039, confidential phone records information includes information that “is contained in any bill, itemization, or account statement provided to a customer by or on behalf of a covered entity solely by virtue of the relationship between that covered entity and the customer.” *Id.* § 1039(h)(1)(C). You argue that because all of the telephone numbers in the submitted information are contained in a bill, itemization, or account statement, such telephone numbers constitute “confidential phone records information” as defined in section 1039(h)(1)(C) and are therefore made confidential by section 1039. However, section 1039 only applies to phone record information held by a covered entity. Section 1039(h)(2) defines covered entities as telecommunications carriers or providers of IP-enabled voice service. *Id.* § 1039(h)(2). Because the city is not a covered entity for purposes of section 1039, information it holds is not subject to section 1039 of title 18 of the United States Code and none of the submitted information may be withheld on that basis.

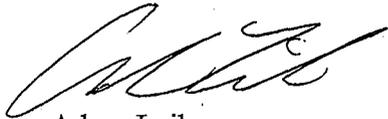
You assert that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. Section 552.136(b) provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Upon review, we agree that the account number and foundation account number you have marked constitute access device numbers for purposes of section 552.136 of the Government Code. However, we find that a portion of the invoice number you have marked does not constitute an access device number for purposes of section 552.136, and it may not be withheld on that basis. Thus, with the exception of the partial invoice number that we have marked for release, the city must withhold the account numbers you have marked pursuant to section 552.136 of the Government Code. The remaining information must be released to the requestor.

Finally, you ask this office to issue a previous determination allowing the city to withhold telephone numbers from cellular telephones issued by the city to its police officers pursuant to section 552.108(b). *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/cc

Ref: ID# 344945

Enc. Submitted documents

c: Requestor
(w/o enclosures)