



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2009

Ms. Karen McNair
Assistant County Attorney
Liberty County
P.O. Box 9127
Liberty, Texas 77575-9127

OR2009-08291

Dear Ms. McNair:

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# 346468.

Liberty County (the "county") received a request for: (1) reinspection of records relating to all hurricane debris removal contracts, including truck certification records, and all records of subcontractors which have been gathered since the requestor's initial inspection; (2) "the first two weeks of dump tickets from C AND C"; (3) e-mails sent or received by any commissioner of the county or their secretaries or executive assistants over a certain time period; (4) cell phone or county phone records from the county judge's office, or his county-issued or reimbursed cell phone, for a certain time period; (5) any documents received by a named county commissioner from prospective bidders for hurricane debris removal; (6) any communications over a certain time period between any contractor and any county commissioner; (7) documents detailing the current inventory location of any equipment bought with discretionary funds authorized by the county judge, and any documents detailing the use of that equipment "during the days following the storm's impact"; and (8) documents detailing any contracts authorized by commissioners court exceeding \$25,000 in value over a certain time period. You have submitted for our review information responsive to one category of the request and claim that portions of the submitted information are excepted

from disclosure under section 552.117 of the Government Code.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

Initially, we note that you have only submitted for our review information that is responsive to the request for cellular telephone records,³ and you do not inform us whether the remaining requested information exists or whether some or all of it has been released to the requestor. Accordingly, to the extent any other information responsive to the requests listed above existed on the date of the request, we assume you have released it to the requestor. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We will next address your raised exception for the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117. Additionally, section 552.117 encompasses personal cellular telephone numbers, provided that the cellular phone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the county may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received.

You state, and provide documentation demonstrating, that prior to the date the request was received by the county, the county judge made a request for confidentiality under

¹Although you raise section 552.024 of the Government Code as an exception to disclosure, we understand you to claim section 552.117 of the Government Code, as this is the proper exception for the substance of your argument.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 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 those records contain substantially different types of information than that submitted to this office.

³You inform us that the county does not supply the county judge with a county-owned cell phone, but rather, reimburses the county judge \$50.00 a month for conducting county business with his personal cell phone. You further inform us that the county judge has agreed to produce itemized billing statements from his county-reimbursed cell phone. *See* Gov't Code § 552.002 (defining "public information" for purposes of the Act).

section 552.024 for his home address, home telephone number, social security number, and information revealing whether the judge has family members. Accordingly, the county must withhold the information we have marked in the submitted document under section 552.117(a)(1) of the Government Code.

We note, however, that you also seek to withhold from the submitted itemized billing statement under section 552.117 the telephone numbers of a business entity owned by the county judge and the telephone number of the judge's business foreman. You state that these numbers "belong to a business(es) personally owned and operated by the County Judge acting in his private capacity." Because section 552.117(a)(1) only protects the home telephone numbers and family member information of current or former officials or employees of a governmental body, the telephone numbers of a business entity owned by the county judge and the judge's business foreman are not excepted under section 552.117.⁴ Accordingly, these numbers may not be withheld under section 552.117. As you raise no other exceptions to disclosure for this information, it must be released to the requestor.

Finally, we note that some of the remaining information is excepted from disclosure under section 552.136 of the Government Code.⁵ Section 552.136 states 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." *Id.* § 552.136. The county must withhold the account number we have marked pursuant to section 552.136 of the Government Code.

To summarize, the county must withhold the information we have marked in the submitted document under section 552.117(a)(1). The county must also withhold the information we have marked under section 552.136. The remaining submitted information must be released to the requestor.

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,

⁴You do not inform us that the phone number of the business entity owned by the county judge is also the judge's home number, or that the judge's business foreman is a family member of the judge.

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/cc

Ref: ID# 346468

Enc. Submitted documents

c: Requestor
(w/o enclosures)