



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 12, 2010

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

OR2010-10256

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# 386199.

The Liberty County Sheriff (the "county") received two requests from the same requestor for five categories of information related to two named individuals and the county sheriff's (the "sheriff") personal and county-provided cell phone records between May 1, 2009 and August 1, 2009. You state you do not have information related to the two named individuals or any of the phone records for the sheriff's personal cell phone.¹ You claim some of the submitted 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.

Section 552.108(b)(1) of the Government Code 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

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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you raise section 552.024 of the Government Code, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. Section 552.117 of the Government Code is instead the proper exception to assert.

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.) (Gov't Code § 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 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.” Open Records Decision No. 506 at 2 (1988). We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and public access to these numbers could interfere with that purpose. *Id.*

You inform us that some of the cellular telephone numbers you have highlighted are assigned to officers who have “specific law enforcement responsibilities.” You assert the release of these cellular telephone numbers would interfere with law enforcement because it would interfere with the ability of officers to perform their job duties. Based on your representations and our review of the information at issue, we conclude the county may withhold the cellular telephone numbers you have highlighted that belong to law enforcement officers under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 of the Government Code.³ Gov't Code § 552.117(a)(2). You inform this office the submitted billing statements contain the telephone numbers of the sheriff's family members and the home telephone number of the sheriff. Thus, to the extent the telephone numbers you have highlighted pertain to the sheriff's family members or the sheriff's home telephone number, they must be withheld under section 552.117(a)(2).

Section 552.136 of the Government Code 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.”⁴ *Id.* § 552.136; *see id.* § 552.136(a) (defining “access device”). Accordingly, the county must

³“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁴The 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).

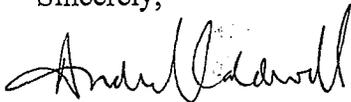
withhold the cellular service account number we have marked under section 552.136 of the Government Code.

In summary, the county may withhold the cellular telephone numbers you have highlighted that belong to law enforcement officers under section 552.108(b)(1) of the Government Code. To the extent the telephone numbers you have highlighted pertain to the family members of the sheriff or is the home telephone number of the sheriff, the county must withhold the telephone numbers under section 552.117(a)(2) of the Government Code. The county must withhold the cellular service account number we have marked under section 552.136 of the Government Code. The remaining submitted information must be released.

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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 386199

Enc. Submitted documents

c: Requestor
(w/o enclosures)