



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 20, 2011

Mr. David G. Petter  
Hoodenpyle, Petter & Barrier, P.C.  
521 East Border Street  
Arlington, Texas 76010-7402

OR2011-18749

Dear Mr. Petter:

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# 439826 (File No. 21840.10565).

The Glen Rose Independent School District (the "district"), which you represent, received a request for the district superintendent's cellular telephone records and the telephone bill for the administration building for a specified time period. You state the administration building's telephone bill either has been or will be released. You contend the superintendent's cellular telephone records are not subject to disclosure under the Act. You also claim information contained in those records is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered your arguments. We also have considered the comments we received from the requestor and the superintendent. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We begin with your assertion that the superintendent's cellular telephone records are not subject to the Act. The Act is applicable to "public information." *See id.* § 552.021. Section 552.002 of the Act provides that "public information" consists of "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.” *Id.* § 552.002(a). Thus, virtually all information in a governmental body’s physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov’t Code § 552.001(a).

You state the district does not receive a bill from the superintendent’s cellular telephone provider and does not have a copy of his cellular telephone records. You assert the district does not own or have a right to access to the superintendent’s cellular telephone records. You acknowledge, however, and have provided a copy of the superintendent’s employment contract confirming, that his compensation includes a monthly \$100.00 communication allowance for cellular telephone and internet expenses. We note the characterization of information as “public information” for purposes of the Act is not dependent on whether the information is in the possession of an official or employee of a governmental body or whether a governmental body has a particular policy or procedure that establishes a governmental body’s access to the information. *See* Open Records Decision No. 635 at 3-4 (1995) (concluding that information does not fall outside the Act’s definition of “public information” merely because an individual official or employee of a governmental body possesses the information rather than the governmental body as a whole); *see also* Open Records Decision No. 425 (1985) (concluding, among other things, that information sent to individual school trustees’ homes was public information because it related to the official business of a governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)). Thus, if the information at issue is related to the district’s business, the mere fact it is not in the district’s possession does not remove the information from the scope of the Act. *See* ORD 635 at 6-8 (stating that information maintained on a privately-owned medium and actually used in connection with the transaction of official business would be subject to the Act). Therefore, having considered all the submitted arguments, we conclude that to the extent the superintendent’s cellular telephone records are related to the transaction of the district’s official business, they are public information for purposes of the Act and must be released, unless the records fall within the scope of an exception to disclosure. *See* Gov’t Code §§ 552.001, .002, .021. To the extent the records in question are not related to official district business, they are not subject to the Act and need not be released.

We next note section 552.301 of the Government Code prescribes procedures a governmental body must follow in asking this office to determine whether requested information is

excepted from public disclosure. *See id.* § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the date of its receipt of the request for information, the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(D). You state the district received the present request for information on September 29, 2011. As of the date of this decision, you have not submitted to this office either any of the superintendent's cellular telephone records or a representative sample of those records. Thus, the district has not complied with section 552.301 of the Government Code in requesting this decision.

If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Claims under sections 552.101 and 552.117 of the Government Code, which you raise, can provide compelling reasons for non-disclosure under section 552.302. But because you have not submitted any of the requested information to this office, we have no basis to conclude any of the information at issue is confidential under sections 552.101 or 552.117. Thus, we have no choice but to order the district to release the superintendent's cellular telephone records, to the extent they are related to official district business, in accordance with section 552.302 of the Government Code.<sup>1</sup> If you believe the records in question are confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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.

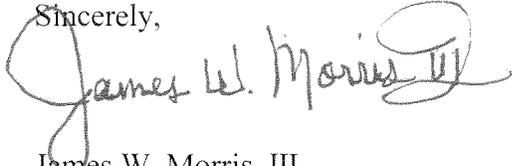
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>1</sup>We note section 552.024(c) of the Government Code authorizes the district to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code §§ 552.024(c)(2), .117(a)(1). We also note the district may redact the superintendent's cellular telephone account number pursuant to section 552.136 of the Government Code, as amended by the Texas Legislature effective September 1, 2011, without the necessity of requesting a decision. *See id.* § 552.136(d)-(e).

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, prominent initial "J".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bs

Ref: ID# 439826

c: Requestor