



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2012

Mr. John A. Peralta
Assistant County Attorney
County of Liberty
P.O. Box 9127
Liberty, Texas 77575

OR2012-03448

Dear Mr. Peralta:

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# 447213.

The Liberty County Sheriff's Office (the "sheriff's office") received a two-part request for e-mails sent to or from four named individuals and cellular telephone records for two of the named individuals from a specified time period. You claim some of the information in the submitted cellular telephone billing records is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of information you submitted.¹ As you have neither submitted nor otherwise seek to withhold any e-mails involving the four named individuals, we assume the sheriff's office has released any information responsive to that part of the present request that existed when the sheriff's

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff's office to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

office received the request. If not, then any such information must be released immediately.² See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We first note the submitted information falls within the scope of section 552.022(a) of the Government Code. Section 552.022(a)(3) provides for required public disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body,” unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(3). In this instance, the submitted cellular telephone billing records constitute information in an account relating to the expenditure of public or other funds by the sheriff's office. Thus, the records at issue are subject to disclosure under section 552.022(a)(3). Although the sheriff's office seeks to withhold some of the information in the submitted records under section 552.108 of the Government Code, we note that section is a discretionary exception to disclosure which protects a governmental body's interests and may be waived. See *id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to Gov't Code § 552.108 could be waived). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(3) of the Government Code. Therefore, the sheriff's office may not withhold any of the submitted information under section 552.108 of the Government Code. As the sheriff's office also claims sections 552.101, 552.117, and 552.136 of the Government Code, all of which make information confidential for purposes of section 552.022(a)(3), we will address the applicability of those exceptions to the information at issue.

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. The sheriff's office claims section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. See Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, EVIDENCE IN TRIALS AT COMMON LAW, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must involve a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990). You state the submitted billing records contain the telephone numbers of confidential informants who have reported alleged criminal violations to the sheriff's office. Based on your representation, we conclude the sheriff's office may withhold any such telephone numbers under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) protects a peace officer's personal cellular telephone or pager number if the officer pays for the cellular telephone or pager service with his or her personal funds. *See* Open Records Decision No. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) excepts from disclosure peace officer's cell phone or pager number if officer pays for cell phone or pager service). You state the submitted billing records also contain the personal telephone numbers of sheriff's deputies. Provided the deputies are licensed peace officers for purposes of article 2.12 of the Code of Criminal Procedure, we conclude the sheriff's office must withhold their home or personal cellular telephone numbers under section 552.117(a)(2) of the Government Code.

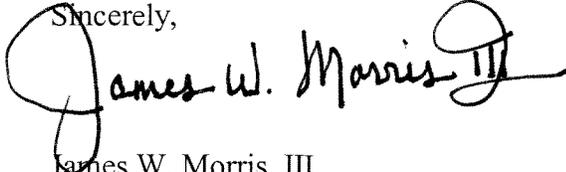
Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The sheriff's office must withhold the cellular telephone account number we have marked under section 552.136 of the Government Code.

In summary, the sheriff's office (1) may withhold the telephone numbers of confidential informants under section 552.101 of the Government Code in conjunction with the common-law informer's privilege; (2) must withhold the home or personal cellular telephone numbers of sheriff's deputies under section 552.117(a)(2) of the Government Code, provided the deputies are peace officers for purposes of article 2.12 of the Code of Criminal Procedure; and (3) must withhold the account number we have marked under section 552.136 of the Government Code. The rest of the 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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

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

JWM/em

Ref: ID# 447213

Enc: Submitted documents

c: Requestor
(w/o enclosures)