



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 17, 2012

Ms. Bridget Chapman  
Acting City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2012-05464

Dear Ms. Chapman:

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# 451111 (ORR 31 and 33).

The City of Georgetown (the "city") received two requests from the same requestor for lists of (1) all city employees with city-issued cellular telephones, the cellular telephone numbers associated with those employees, and the dates on which the cellular telephones were issued to them and (2) all city employees who receive a stipend for cellular telephone use, the numbers associated with the cellular telephones for which the employees receive stipends, and the dates on which the stipends were issued to them. You claim some of the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you submitted.

We first note the submitted information does not include the requested dates on which cellular telephones or stipends for cellular telephones were issued to city employees. Thus, although you state the city has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter ruling applies

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<sup>1</sup>As you also initially raised section 552.101 of the Government Code, but have submitted no arguments in support of your assertion of that exception, this decision does not address section 552.101. See Gov't Code § 552.301(e)(1)(A) (governmental body must provide written comments stating why each exception it claims is applicable to information at issue).

only to the types of information you have submitted for our review. This ruling does not authorize the city to withhold any types of information that are substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). We therefore assume the city has released the requested dates on which cellular telephones or stipends for cellular telephones were issued to city employees, to the extent such information existed when the city received these requests for information. If not, then the city must release any such information immediately.<sup>2</sup> *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is 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 governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why 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.” ORD 506 at 2. We noted that the purpose of the cellular telephones involved was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to their telephone numbers could interfere with that purpose. *Id.* You indicate most of the cellular telephone numbers at issue are those of city police officers. We understand you to contend release of the police officers' cellular telephone numbers would interfere with law enforcement and crime prevention. Based on your representations and our review of the information at issue, we conclude the city may withhold the police officers' cellular telephone numbers under section 552.108(b)(1) of the Government Code.<sup>3</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who

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<sup>2</sup>We 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 dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

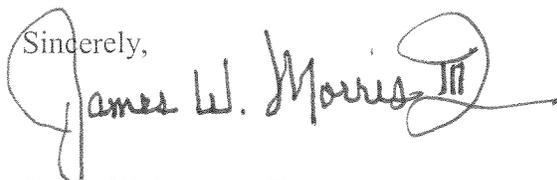
<sup>3</sup>As we are able to make this determination, we need not address your other exception to disclosure of the police officers' cellular telephone numbers.

requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. We note section 552.117(a)(1) encompasses an official's or employee's personal cellular telephone or pager number if the official or employee pays for the cellular telephone or pager service with his or her personal funds. In this instance, you indicate the remaining cellular telephone numbers at issue are those of civilian city employees. You state the employees concerned receive a stipend from the city for their cellular telephone service. Thus, because the city pays for the employees' cellular telephone service, we conclude the city may not withhold their cellular telephone numbers under section 552.117(a)(1) of the Government Code. *See* ORD 506 at 5-6 (statutory predecessor to Gov't Code § 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business).

In summary, the city may withhold the police officers' cellular telephone numbers under section 552.108(b)(1) 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](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,  


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

JWM/em

Ref: ID# 451111

Enc: Submitted documents

c: Requestor  
(w/o enclosures)