



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2012

Ms. Cara Leahy White
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2012-08074

Dear Ms. White:

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# 454730.

The City of Crowley (the "city"), which you represent, received a request for (1) all telephone records for any city owned or issued telephone possessed or used by two named city police officers for a specified time period and (2) any information released to any requestor pursuant to the Act regarding a third named individual for a specified time period.¹ You claim the submitted information is not subject to the Act. You further claim the submitted information is not responsive to the request, and in the alternative, claim some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information.

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

Initially, you claim that the named officers' cellular telephone records are not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

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.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is 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 that 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).

We further note that the characterization of information as "public information" under the Act is not dependent on whether the requested records are in the possession of an individual 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) (finding that information does not fall outside definition of "public information" in Act merely because individual member of governmental body possesses information rather than governmental body as 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 official business of governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)). Thus, the mere fact that the city does not possess the information at issue does not take the information outside the scope of the Act. *See id.* Furthermore, we note information in a public official's personal cellular telephone records may be subject to the Act where the public official uses the personal cellular telephone to conduct public business. *See* ORD 635 at 6-7 (appointment calendar owned by a public official or employee is subject to the Act when it is maintained by another public employee and used for public business).

You state the named officers, not the city, own the cellular telephone services and devices at issue and have sole access to their cellular telephone records. You further state that the cellular telephone records are sent to the named officers' homes, and the officers do not maintain the records for the city. However, you acknowledge that the city provides the named officers with an allowance to off-set the costs of owning personal cellular telephones.

We reiterate that information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. *See* Gov't Code § 552.002(a). You state the redacted telephone numbers do not relate to the official business of the city. Accordingly, these portions of the submitted information are not subject to the Act and need not be released. However, we find the remaining submitted information is subject to the Act, and as such, we will address your argument against disclosure of this information.

Next, we note you have not submitted any information responsive to the request for telephone records of one of the named officers in item one and any of the information requested in item two. To the extent information regarding these portions of the request existed on the date the city received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 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).

Next, you assert the remaining submitted information is not responsive to the instant request for information. However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8 (1990). In this case, as you have submitted information for our review and raised exceptions to disclosure of this information, we consider the city to have made a good-faith effort to identify the information that is responsive to the request, and we will address the applicability of the claimed exceptions to the remaining submitted information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, 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 elects confidentiality under section 552.024 or 552.1175 of the Government Code.² Gov't Code § 552.117(a)(2). Additionally, section 552.117 encompasses personal cellular telephone numbers, provided the service is not paid for by a governmental body. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). Accordingly, to the extent the remaining submitted information contains the home or personal cellular telephone numbers of city police department officers or information that reveals whether the named officer has family members, then the city must withhold this information under section 552.117(a)(2) of the Government Code; however, the city may only withhold the cellular telephone numbers of city police department officers if the service is not paid for by a governmental body.

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses, telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Accordingly, to the extent the remaining submitted information contains the home or personal cellular telephone numbers of city employees who timely elected confidentiality under section 552.024, the city must withhold this information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone numbers of city employees if the service is not paid for by a governmental body.

Section 552.136 of the Government Code provides in part 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"). Upon review, we find the city must withhold the cellular telephone account number in the remaining submitted information under section 552.136 of the Government Code.

In summary, the redacted telephone numbers are not subject to the Act and need not be released in response to this request. To the extent the remaining submitted information contains the home or personal cellular telephone numbers of city police department officers or information that reveals whether the named individual has family members, then the city must withhold this information under section 552.117(a)(2) of the Government Code; however, the city may only withhold the cellular telephone numbers of city police department officers if the service is not paid for by a governmental body. To the extent the remaining submitted information contains the home or personal cellular telephone numbers of city employees who timely elected confidentiality under section 552.024 of the Government Code, the city must withhold this information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone numbers of city employees if the service is not paid for by a governmental body. The city must withhold the cellular telephone account number in the remaining submitted information under section 552.136 of the Government Code. The city must release the remaining information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 454730

Enc. Submitted documents

c: Requestor
(w/o enclosures)