



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2012

Ms. Jennifer M. Engdale  
For Simms Independent School District  
Powell & Leon, L.L.P.  
1706 West Sixth Street  
Austin, Texas 78703

OR2012-15525

Dear Ms. Engdale:

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# 466592.

The Simms Independent School District (the "district"), which you represent, received a request for thirteen categories of information, including monthly statements and financial records for cellular telephone service provided to the district's superintendent and administrators for the past five years.<sup>1</sup> You state the district has released most of the requested information. You state the district will redact account numbers pursuant to section 552.136 of the Government Code.<sup>2</sup> You claim portions of the submitted information are not subject to the Act. In the alternative, you claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code.

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<sup>1</sup>You inform this office the requestor was required to make a deposit for payment of anticipated costs under section 552.263 of the Government Code, which the district received on July 10, 2012. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

<sup>2</sup>Section 552.136 authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of seeking an attorney general decision. *See* Gov't Code § 552.136(b). If a governmental body redact such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, you argue the telephone numbers you have marked in the district's cellular telephone bills 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.

*Id.* § 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).

You contend the telephone numbers you have marked in the district's cellular telephone bills are not subject to the Act because they are related to personal telephone communications between district administrators and their friends and family. However, you indicate the district is responsible for payment of the cellular telephone bills. Therefore, because the information at issue is contained within the district's cellular telephone bills and involves the expenditure of public funds, we find the information at issue is maintained by the district in connection with the transaction of official business. *See* Gov't Code § 552.022(a)(3) (making "information in an account, voucher, or contract related to the receipt or expenditure of public or other funds by a governmental body" expressly public unless made confidential under the Act or other law). Accordingly, the information at issue is subject to the Act and must be released, unless it falls within an exception to public disclosure under the Act.

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

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<sup>3</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To establish the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. You seek to withhold the marked telephone numbers of friends and family of district administrators in the submitted information. We note that telephone numbers are generally not private information. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, home address and telephone number not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers ordinarily not private). Upon review, we find no portion of the submitted information is highly intimate or embarrassing or of no legitimate public concern. Consequently, the district may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You seek to withhold the telephone numbers you have marked in the submitted cellular telephone bills under section 552.117(a)(1). 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 employee or official 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. You state the district administrators whose information is at issue timely requested confidentiality under section 552.024. You further state release of the marked telephone numbers "would identify close family members and friends of administrators." Therefore, to the extent the marked telephone numbers consist of the home telephone numbers of current or former district employees or the telephone numbers of district employees' family members, we find the district must withhold the marked telephone numbers under section 552.117(a)(1) of the Government Code. To the extent the marked telephone numbers do not consist of the home telephone numbers of current or former district employees or the telephone numbers of district employees' family members, the district may not withhold the marked telephone numbers under section 552.117(a)(1). As you raise no further exceptions to disclosure, the remaining 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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

Ref: ID# 466592

Enc. Submitted documents

c: Requestor  
(w/o enclosures)