



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2013

Mr. J. Eric Magee
Counsel for Waller County
Allison, Bass & Associates, LLP
402 West 12th Street
Austin, Texas 78701

OR2013-07393

Dear Mr. Magee:

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# 486162.

The Waller County Judge's Office and two Waller County Commissioners (collectively, the "county"), which you represent, received a request for seven categories of information.¹ You state the county will make information responsive to categories 1, 2, 4, 5, 6, and 7 of the request available to the requestor, with certain redactions approved by the requestor.² You claim Exhibit A is not subject to the Act. In addition, you claim some of Exhibit A is excepted from disclosure under sections 552.117 and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.³ We have also received and considered comments submitted by the requestor.

¹You state the county sought and received clarification of the information requested. *See* Gov't Code § 552.222.

²In a letter dated May 1, 2013, you informed our office the county wished to withdraw its request for an opinion regarding the information submitted as Exhibit B. Accordingly, this ruling does not address that information or your argument under section 552.131 of the Government Code.

³We assume the "representative sample" of information 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.

See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, you argue the information at issue is 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).

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)). 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 information at issue consists of the personal cellular telephone records of two Waller County commissioners. However, you also state Waller County provides these individuals with an allowance to cover cellular telephone usage. Thus, we determine to the extent the submitted cellular telephone records constitute the transaction of official business of Waller County, they are subject to the Act. However, to the extent the individuals' cellular telephone records do not constitute official business of Waller County, they are not subject to the Act and need not be released.

To the extent the submitted cellular telephone records constitute official business of Waller County and are subject to the Act, we will address your arguments under sections 552.117 and 552.136 of the Government Code. Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or 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)*. Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). 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 official or 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. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold information we have marked under section 552.117(a)(1) of the Government Code. If the individual whose information is at issue did not timely request confidentiality under section 552.024, the county may not withhold the marked information under section 552.117(a)(1) of the Government Code. As previously noted, you inform us the individuals' cellular telephone services are paid for, in part, with Waller County funds. In addition, you generally assert the remaining information in Exhibit A may include the personal telephone numbers of current or former county officials or employees. However, you have not demonstrated any of the remaining information in Exhibit A consists of the personal home telephone number or personal cellular telephone number of a current or former county employee. Thus, no portion of the remaining information in Exhibit A may be withheld under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code provides "[n]otwithstanding any other provision of this chapter, 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. Accordingly, we find the county must withhold the cellular telephone account numbers we have marked in Exhibit A under section 552.136 of the Government Code.

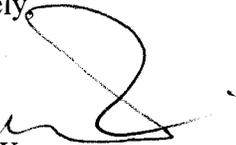
In summary, to the extent the cellular telephone records do not constitute official business of Waller County, they are not subject to the Act and need not be released. To the extent the submitted cellular telephone records constitute official business of Waller County and are subject to the Act, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, and the county must withhold the cellular telephone account numbers we have marked under

section 552.136 of the Government Code. The county 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 486162

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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