



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2013

Mr. Zachariah T. Evans
Akers Law Firm, L.L.P.
6618 Sitio Del Rio, Building E, Suite 102
Austin, Texas 78730

OR2013-12918

Dear Mr. Evans:

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# 494517.

The City of Taft (the "city"), which you represent, received a request for the city and personal cellular telephone records of a named city employee. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information consists of cellular telephone bill statements, which contain information in an account, voucher, or contract relating to the expenditure of public funds. Accordingly, subsection 552.022(a)(3) is applicable to the submitted information. Information subject to subsection 552.022(a)(3) may be withheld only if it is made confidential under the Act or other law. *See id.* You argue portions of the cellular telephone statements are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See Open Records Decision No. 177 (1977)* (governmental body may waive statutory predecessor to section 552.108); *see also Open Records Decision No. 522 at 4 (1989)* (discretionary exceptions in general). Accordingly, we conclude the city may not withhold any portion of the submitted cellular telephone bill statements under section 552.108 of the Government Code. However, sections 552.117 and 552.136 of the Government Code are other laws for the purposes of subsection 552.022(a)(3).² Therefore, we will consider the applicability of these exceptions to the submitted information.

Subsection 552.117(a)(2) of the Government Code excepts from public 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 peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See Gov't Code § 552.117(a)(2)*. Subsection 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is applicable to personal 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)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The submitted cellular telephone statements may contain home or personal cellular telephone numbers belonging to licensed peace officers or to family members of licensed peace officers. We are unable to determine whether a governmental body pays for the cellular telephone service for any of the numbers at issue. Thus, to the extent any of the telephone numbers in the submitted information consist of home or personal cellular telephone numbers belonging to licensed peace officers or to the family members of licensed peace officers, the city must withhold such information under subsection 552.117(a)(2); however, any cellular telephone numbers may be withheld only if a governmental body does not pay for the telephone service.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

If any of the remaining telephone numbers in the submitted information consist of home or personal cellular telephone numbers belonging to current or former employees of the city who are not licensed peace officers or to the family members of these employees, then such information may be subject to subsection 552.117(a)(1) of the Government Code. Subsection 552.117(a)(1) 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 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 subsection 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 subsection 552.117(a)(1) only 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. Information may not be withheld under subsection 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. As noted above, section 552.117 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Therefore, to the extent the remaining information consists of home or personal cellular telephone numbers belonging to current or former employees of the city or their family members, and the current or former employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold such information under subsection 552.117(a)(1) of the Government Code; however, any cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. To the extent the current or former employees at issue did not timely request confidentiality under section 552.024, the city may not withhold the cellular telephone numbers at issue under subsection 552.117(a)(1).

Some of the remaining information is subject to section 552.136 of the Government Code. Section 552.136 provides, "[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"). Accordingly, the city must withhold the cellular account numbers we have marked under section 552.136 of the Government Code.

In summary, to the extent any of the telephone numbers in the submitted information consist of home or personal cellular telephone numbers belonging to licensed peace officers or their family members, the city must withhold such information under subsection 552.117(a)(2) of the Government Code. To the extent the remaining information consists of home or personal cellular telephone numbers belonging to current or former employees of the city or their family members, and the current or former employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold such information under subsection 552.117(a)(1) of the Government Code. However, any cellular

telephone numbers may be withheld under subsection 552.117(a)(2) or subsection 552.117(a)(1) of the Government Code only if a governmental body does not pay for the cellular telephone service. The city must withhold the cellular account numbers we marked under section 552.136 of the Government Code. The city must release the remaining information pursuant to subsection 552.022(a)(3) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 494517

Enc. Submitted documents

c: Requestor
(w/o enclosures)