



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 21, 1993

Mr. Steven C. Hilbig
Bexar County Criminal District Attorney
Bexar County Justice Center
300 Dolorosa, Suite 5072
San Antonio, Texas 78205-3030

OR93-252

Dear Mr. Hilbig:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19804.

Bexar County (the "county") has received a request for "a list of the county employees who have been issued a cellular phone and copies of the phone bills for each number for the past twelve months." You advise us that a list of all employees who have county-issued cellular phones has been provided to the requestor. You claim, however, that copies of the requested telephone billing statements are excepted from required public disclosure by sections 3(a)(1), 3(a)(8), and 3(a)(9) of the Open Records Act.

You claim that release of the telephone billing statements is prohibited by sections 3(a)(1) and 3(a)(9) because it implicates the privacy interests of county employees and elected officials. Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(9) excepts "private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy." Section 3(a)(9) protects the same privacy interests as section 3(a)(1), and decisions under section 3(a)(9) rely on the same tests applicable under section 3(a)(1). *See, e.g.,* Open Records Decision Nos. 506 (1988) at 3; 241 (1980); 212 (1978). Section 3(a)(1) excepts information from required public disclosure if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Information may also be withheld from required public disclosure under section 3(a)(1) if its release would cause an invasion of constitutional privacy. The test for constitutional privacy involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Industrial Foundation*, 540 S.W.2d at 685. The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships,

and child rearing and education. Open Records Decision No. 447 (1986) at 4. A public employee's job performance does not generally constitute his private affairs. Open Records Decision No. 470 (1987) at 4. Indeed, on numerous occasions this office has held that the reasons for an employee's resignation or termination are not ordinarily excepted from required public disclosure by the doctrine of common-law privacy, *see, e.g.*, Open Records Decision Nos. 444 (1986) (reason's for employee's termination not excepted under doctrine of common-law privacy) (section 3(a)(2)); 329 (1982); 269 (1981) (documents relating to an employee's resignation may not be withheld under doctrine of common-law privacy) (section 3(a)(2)), nor is information regarding an employee's job performance, qualifications, or abilities, *see* Open Records Decision No. 455 (1987). The scope of common law privacy is very narrow, Open Records Decision Nos. 328 (1982); 268 (1981), and the common law and constitutional privacy rights of public officials are of particularly limited scope, *see* Open Records Decision No. 212 (1978) at 3.

You state in your letter that "the only interest which mitigates in favor of disclosure [of the bill information] is the public's right to ensure that a public entity is reimbursed for private phone calls," thereby suggesting that some of the telephone calls contained on the billing statements are to private parties. You do not identify such call information, however, nor do you indicate that such information is intimate or embarrassing or relates to marriage, procreation, contraception, family relationships, and child rearing and education. On its face, the bill information as a whole does not appear to be intimate or embarrassing, nor does it appear to relate to marriage, procreation, contraception, family relationships, and child rearing and education. Moreover, as you concede, the public has a "right to ensure that a public entity is reimbursed for private phone calls," and may have other legitimate interests in viewing the billing statements. As we have no basis to conclude that the billing statements submitted to us for review are protected by either common law or constitutional privacy, we determine that they may not be withheld from required public disclosure under sections 3(a)(1) and 3(a)(9) of the Open Records Act.

You also claim that you may withhold the telephone numbers assigned to county officials and employees and the telephone numbers called under section 3(a)(8) of the Open Records Act, which excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Even if a matter is closed, information may be withheld under certain circumstances. Open Records Decision No. 397 (1983) at 2. "When the 'law enforcement' exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and

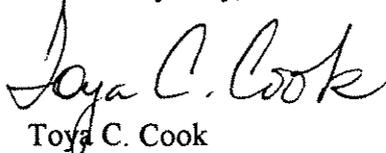
why release of it would unduly interfere with law enforcement." Open Records Decision No. 287 (1981) at 2.

Initially, we note that Open Records Decision No. 506 (1988) (copy enclosed) addressed the availability of cellular mobile telephone numbers under the Open Records Act. In that decision, this office specifically held that section 3(a)(8) protects the cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities. *Id.* at 2. Accordingly, such telephone numbers may be withheld from required public disclosure to the extent that they are contained in the submitted billing statements.

You claim that release of the telephone numbers called would unduly interfere with law enforcement by allowing the public to discern the direction of an investigation by reviewing calls made by the county officials or employees involved. You also claim that release of the telephone numbers called would result in disclosure of the telephone numbers of other law enforcement officials, thereby unduly interfering with law enforcement for the reasons explained in Open Records Decision No. 506. Finally, you claim that release of the telephone numbers called would unduly interfere with law enforcement by resulting in the disclosure of the telephone numbers of informants. On the basis of these arguments, we conclude that you may withhold the telephone numbers called under section 3(a)(8) of the Open Records Act. Except for telephone numbers such as were addressed in Open Records Decision No. 506, the remaining information contained on the telephone billing statements must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Opinion Committee

TCC/GCK/le

Ref.: ID# 19804

Enclosure: Open Records Decision No. 506

cc: Ms. Tanji Patton
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(w/o enclosure)