



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 21, 1994

Ms. Diana G. Bertini  
Assistant City Attorney  
City of Galveston  
P.O. Box 779  
Galveston, Texas 77553-0779

OR94-730

Dear Ms. Bertini:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26605.

The City of Galveston (the "city") received a request for information concerning cellular phone bills. The requestor specifically asks for "copies of all long distance telephone records for all telephones at the airport," including the airport manager's cellular phone for a certain two month period. You assert that the cellular phone account is the manager's personal account and that he is reimbursed by the city for business related calls. Thus you claim that the record of all personal calls is excepted from required public disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup>

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates the doctrines of constitutional law and common-law privacy as well as various statutory provisions that make specified documents confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court articulated the primary test used to determine whether information is confidential under the doctrine of common-law privacy and therefore exempt from required public disclosure under section 552.101 of the act.

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<sup>1</sup>You raise no exception to the request for "all long distance telephone records for all telephones at the airport," thus we assume that you intend to release them in their entirety.

*Id.* The court stated that information is confidential if it contains highly intimate or embarrassing facts about an individual's private affairs such that the release of the information would be highly objectionable to a reasonable person *and* if the information is of no legitimate concern to the public. *See id.* at 683-85.

With regard to the airport manager's personal cellular phone, you state that only calls made concerning city business should be disclosed. You have submitted copies of the requested documents in their original form as well as a copy of the documents with the records of personal phone calls excised. In Open Records Decision No. 185 (1978), this office considered whether lists of individuals with whom prison inmates correspond came within the protection of the constitutional right to privacy. It was concluded that the right of privacy did extend to such information and that such right overcame the public's right to obtain the lists. *Id.* at 2; *see also* Open Records Decision No. 430 (1985) (prison inmates' visitor lists protected by constitutional right to privacy).

We therefore conclude, that in such an instance, as here, where the city has reimbursed the individual for all calls relating to city business made by the individual on his personal phone, it is the record of those calls only which may be subject to disclosure. The personal telephone numbers called by the individual are of no legitimate public concern and the disclosure of such numbers to the public would result in an invasion of the individual's constitutional right to privacy.<sup>2</sup> You should therefore withhold from the general public those portions of the account statements which reveal the telephone numbers reflecting the manager's personal telephone calls.

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

Yours very truly,



Toya Cirica Cook  
Assistant Attorney General  
Open Government Section

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<sup>2</sup>Open Records Decision No. 506 (1988) determined that the phone numbers of cellular telephones owned by the county and used by county employees were open to the public. This office stated that "[d]ifferent considerations apply if the individual official or employee pays for the . . . mobile phone in his private vehicle and simply seeks reimbursement for calls made on county business." *Id.* at 6.

Ref.: ID# 26605

Enclosures: Submitted documents

cc: Mr. Bill Brown  
2427 Comanche  
Galveston, Texas 77554  
(w/o enclosures)