



December 2, 2002

Mr. Joe A. De Los Santos  
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P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2002-6813

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172961.

The Llano Independent School District (the "district"), which you represent, received a request for the itemized cellular phone bills for the district superintendent for the months of May, June, and July of 2001. You claim that the requested information is not public information subject to disclosure under the Public Information Act. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered the comments and information submitted to this office by the requestor. *See* Gov't Code § 552.304 (permitting interested party to submit reasons why requested information should or should not be released).

Section 552.002 of the Government Code defines public information 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

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<sup>1</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.

body and the governmental body owns the information or has a right of access to it.” In support of your assertion that the requested information is not subject to the Act, you state

[t]he District provides the Superintendent with a cell phone allowance for the use of his personal cell phone for work-related business. . . . Consequently, the itemized cellular telephone bills requested are sent directly by the cell phone provider to the Superintendent’s home. The School District does not maintain or possess these records. That is, the District does not collect, assemble or maintain these bills and, therefore, this information is not “public information” under the Act.

However, you further state in a footnote that “. . . the Superintendent has two cell phones that he has purchased with his own money. Although the Superintendent has one of the bills sent to his office, the District only provides the Superintendent an allowance for a set amount regardless of the total amount of each cell phone bill. The District would like to emphasize that the superintendent pays each monthly bill from his cell phone provider directly from his personal checking account.”

Upon review of the sample cellular phone bills you have submitted to this office, we note that the bill is addressed to the superintendent at the school district’s offices.<sup>2</sup> In addition, we note that the requestor has submitted the front page of a phone bill for the same account with a billing date of July 10, 2001 which has been date-stamped as “received” by the district’s business office. The requestor states she received this information from the district’s Director of Finance. Thus, it is clear to this office that the requested information is in fact “maintained” by the district. Given your statement that the superintendent uses his cell phone for business purposes and that the district reimburses him for his cell phone expenses, we conclude that the submitted cell phone billing records are public information subject to disclosure under the Act in that they relate to the transaction of official district business. *See* Gov’t Code § 552.022(a)(3) (making “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body” expressly public unless made confidential under other law). As you raise no exceptions to disclosure of the submitted information, we conclude that the requested information must be released to the requestor, with the following possible exception.

We note that section 552.117(1) excepts from disclosure the home addresses and home telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Section 552.117(1) will not except from disclosure telephone numbers of mobile or cellular telephones that are provided to officials or

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<sup>2</sup>The address on the phone bill is 200 E. Lampasas St., Llano, TX 78643-2765, which is the address of the district as noted on the district’s website at <http://www.llano.k12.tx.us/>.

employees by a governmental body for work purposes. Open Records Decision No. 506 at 5-6 (1988) (section 552.117 does not apply to cellular phone number accounts paid for by governmental body and intended for use at work for government business). However, you inform us that the superintendent has purchased the cell phones whose billing records are at issue with his own money. Thus, we conclude that the superintendent's personal cell phone numbers may be excepted under section 552.117(1). See Open Records Decision No. 506 (1988).

Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(1) on behalf of current or former district officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You do not state whether the superintendent had made a section 552.024 election when this request for information was received. Therefore, we conclude that the superintendent's personal cell phone numbers, as well as his home phone number if appearing in the requested bills, are excepted from disclosure under section 552.117(1) if the superintendent timely elected to keep that information confidential under section 552.024.

To summarize, the submitted information is public information and must be released to the requestor with the possible exception of the superintendent's personal cell phone numbers and home telephone number if appearing in the requested bills.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 172961

Enc. Submitted documents

c: Ms. Patricia Donahy  
13241 W. Ranch Road 152  
Llano, Texas 78643  
(w/o enclosures)