



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 16, 2002

Mr. Keith Downs
Assistant Criminal District Attorney
Smith County
100 N. Broadway, #304
Tyler, Texas 75702

OR2002-7170

Dear Mr. Downs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173718.

The Smith County Constable, Precinct # 3 (the "constable") received a request for "all itemized cellular phone bills since July 8, 2002, including all numbers dialed to and from." You claim that the requested records are not "public information" subject to disclosure under the Public Information Act (the "Act"). In the alternative, you claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

The Act applies to "public information," which is defined under section 552.002 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.

Gov't Code § 552.002; *see also id.* § 552.021. You explain that Constable Smith receives a monthly allowance for the use of a cellular telephone. You explain that the cellular telephone "is listed in his personal name" and that "[t]he itemized bills come directly to his home, and no information is required to be provided to any Smith County office concerning

the itemized bill.” Based on your representations, we agree that the cellular telephone bill sent to the home of an employee receiving a cellular telephone allowance is not “public information” under the Act because the constable does not collect, assemble, or maintain these bills. *See id.* § 552.002. As we are able to make this determination, we need not address your arguments concerning section 552.108 or 552.117.

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).

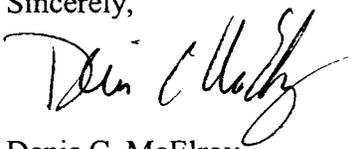
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If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 173718

Enc. Submitted documents

c: Mr. Jeff Mokalip
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Troup, Texas 75789
(w/o enclosures)