



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2004

Ms. Jill Torbert
Assistant District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2004-2513

Dear Ms. Torbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198422.

Bexar County Infrastructure Services (the "county") received a request for "electronic data recorded by Public Works" regarding a specified parking garage and parking lot, including card holders, card numbers, gates, and entry and exit dates and times. You claim that the requested information is not "public information" under the Public Information Act ("Act"). In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted to this office by the requestor's representative. *See Gov't Code* § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.002(a) 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

¹We 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)*. Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Thus, information is generally “public information” under the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties. You assert that “[w]hen and where an employee parks does not pertain to an office or position of duty, trust, or authority.” However, you also explain that the parking garage in question has “437 spaces [] reserved for County employees,” and that the surface lot in question has 38 spots “reserved for County elected officials and the managerial staff of the County offices and departments.” Further, the county operates and maintains the parking facilities. Therefore, we find that the submitted information, which concerns parking spaces reserved for county employees, is maintained by the county in connection with its official business. Accordingly, we conclude that the submitted information is subject to disclosure under the Act and must be released to the requestor, unless an exception to disclosure applies. *See* Gov’t Code § 552.002(a).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Under this section, this office has determined that information may be withheld from public disclosure in special circumstances. In Open Records Decision No. 169 (1977), we considered the personal safety concerns of public employees and recognized that there may be specific instances where “special circumstances” exist to except from public disclosure some of the employees’ addresses. *See* Open Records Decision No. 123 (1976). In that decision, the employees demonstrated that their lives would be placed in danger if their addresses were released to the public. ORD 169 at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* at 6.

You assert that “[b]y releasing information about the place and time someone parks his vehicle, [the county] would confirm, to the public at large, critical information about where someone parks his car and provide patterns of behavior, leaving people vulnerable [sic] to physical attack.” You have submitted affidavits from Deputy Chief Dennis James McKnight of the Bexar County Sheriff’s Office, Court Security and Transport Division, and Chief Investigator Michael C. Beers of the Bexar County District Attorney’s Office. Deputy Chief McKnight attests that certain individuals have made specific threats against judges, other elected officials, and county employees who park in the garage and surface lot in question. Additionally, he asserts that the “release of the requested parking records which reveal the specific entrance and exit locations of County officials and employees from the two parking facilities as well as the arrival and departure times would pose a serious risk by enabling an individual to plan an attack on a County official or employee based upon these habits and patterns.” Deputy Chief McKnight further opines that “release of this information . . . will present an imminent threat of physical danger or bodily harm to the individuals whose

records were requested.” Finally, Chief Investigator Beers adds that specific death threats have been made against the Bexar County District Attorney and her staff, and that “being aware of the parking location of the District Attorney and her employees and studying their arrival and departure times will provide the individual with information that could jeopardize [their] safety.” Based on the representations of Deputy Chief McKnight and Chief Investigator Beers and our review of the submitted information, we conclude that the county has demonstrated the existence of special circumstances regarding judges, county officials, county employees, and the Bexar County District Attorney and her staff. Accordingly, the county must withhold the responsive information related to judges, county officials, county employees, and the Bexar County District Attorney and her staff under section 552.101 of the Government Code.²

In regard to the remaining responsive information, you assert that a portion of this information is confidential under section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, 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. Thus, pursuant to this section, the county must withhold the remaining account numbers you have marked.

Additionally, we note that section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130. Accordingly, if the remaining responsive information contains license plate numbers issued by an agency of this state, the county must withhold these numbers pursuant to section 552.130 of the Government Code.

In summary, we conclude that: 1) the county must withhold the responsive information related to judges, county officials, county employees, and the Bexar County District Attorney and her staff under section 552.101 of the Government Code; 2) the county must withhold the remaining account numbers under section 552.136 of the Government Code; and 3) if the remaining responsive information contains license plate numbers issued by an agency of this state, the county must withhold these numbers pursuant to section 552.130 of the Government Code. As you make no additional arguments, all remaining responsive information must be released.

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

²As our ruling on this issue is dispositive, we need not address your remaining argument under section 552.102 of the Government Code.

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 Dep't of Pub. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

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Enc: Submitted documents

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