



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2005

Ms. Erin Davis Fonté and Mr. C. Brian Cassidy
Locke, Liddell & Sapp, L.L.P.
100 Congress Avenue, Suite 300
Austin, Texas 78701-4042

OR2005-04296

Dear Ms. Fonté and Mr. Cassidy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223506.

The Central Texas Regional Mobility Authority (the "authority"), which you represent, received a request for (1) "all past cell phone bills" related to a named individual; (2) all invoices and contracts involving three named individuals as contractors, subcontractors, consultants, "subconsultants," or employees of two identified companies or any other company; and (3) information that reflects the process the authority and another entity utilize to select contractors and subcontractors. You state that the authority has released some information responsive to item numbers 2 and 3 of the request. However, you state that the authority does not possess information related to two of the individuals identified in item number 2 of the request.¹ You argue that portions of the submitted information are not subject to disclosure under the Act. Additionally, you claim that portions of the submitted information are excepted from disclosure under sections 552.117 and 552.136 of the

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Government Code. We have considered your arguments and the exceptions you claim and reviewed the submitted representative samples of the requested information.²

First, we address your contention that some of the submitted information is not public information subject to the Act. You assert that telephone numbers called by the named individual in a personal capacity that are reflected in the submitted mobile telephone billing statements and that you have highlighted in yellow do not constitute public information subject to release under the Act. 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. Thus, under this provision, information is generally “public information” within the scope of 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, even though it may be in the possession of one person. *See* Open Records Decision No. 635 at 4 (1995). In addition, section 552.001 states it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov’t Code § 552.001(a).

You explain that, from the first day of his employment with the authority, until October 15, 2004, the named individual whose mobile telephone billing statements are at issue personally contracted with the mobile telephone providers for his mobile telephone service. You further explain that the named individual requested that the mobile telephone service providers mail the billing statements to the authority’s project office.³ During this period of time, you explain that the authority issued a check for payment of the entire month’s mobile telephone bill, and that the named individual then reimbursed the authority for all weekend minutes and designated weekday personal numbers, including additional payments for taxes and any

² 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.

³ You advise that, for a period of time the named individual maintained two personal mobile telephones, and that he directed that both billing statements be sent to the authority’s office.

inadvertent omissions. You further explain that on October 15, 2004 the named individual transferred one of his personal mobile telephone numbers to the authority in conjunction with a new mobile telephone services contract, and that the named individual continued to reimburse the authority for personal calls in the exact manner he had prior to the October 15th contract change and telephone number transfer.⁴ Finally, you state that the named individual used the personal mobile telephones for both official authority business and personal matters.

You argue that the yellow highlighted telephone numbers reflected in the submitted mobile telephone billing statements reflect calls made by the named individual in a strictly personal capacity. We note, however, that because the mobile telephones were used and continue to be used to conduct official authority business, and all of the statements are sent to the authority and paid by the authority, the billing records as a whole constitute information that is collected, assembled, or maintained by the authority in connection with the transaction of official authority business. Thus, after carefully considering your representations and reviewing the information at issue, we find that this information constitutes public information for purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 3-4 (1995) (because calendar contained entries that were “commission-related,” among other factors, commissioner’s calendar held subject to Act). Accordingly, we conclude that the yellow highlighted information is subject to the Act. *See* Gov’t Code § 552.002(a). As you make no other arguments against disclosure for this information, and it is not otherwise confidential by law, it must be released to the requestor.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the authority may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the district’s receipt of this request for information. The authority may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election for confidentiality under section 552.024.

You inform us that the telephone numbers that you have highlighted in blue relate to employees who elected to keep their information confidential under section 552.024. You advise us that the employees at issue all elected to keep their information confidential prior the date the authority received the present request for information. We therefore agree that most of the highlighted telephone numbers are excepted from disclosure under section 552.117(a)(1). We note, however, that although the named individual at one time

⁴ You advise that the named individual had previously canceled the other personal mobile telephone contract.

held one of the mobile telephone numbers you have highlighted in a personal capacity, this mobile telephone number is now assigned to the mobile telephone issued to the authority under a contract between the authority and the mobile telephone service provider and provided to the named individual. As noted, the authority pays for the mobile phone service. As such, the authority may not withhold this mobile telephone number under section 552.117 and it must be released. We have marked the mobile telephone number that must be released. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use).

Finally, you argue that section 552.136 is applicable to the account numbers you have highlighted in pink. This section 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. The authority must, therefore, withhold the account numbers you have highlighted under section 552.136.

In summary, with the exception of the mobile telephone number that relates to the mobile phone issued to and paid for by the authority, which we have marked, the authority must withhold the telephone numbers you have highlighted under section 552.117. The authority must also withhold the account numbers under section 552.136. The remaining submitted 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 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 223506

Enc. Submitted documents

c: Mr. Sal Costello
10300 Dalea Vista Court
Austin, Texas 78738
(w/o enclosures)