



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2006

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2006-12501

Dear Mr. Schneider:

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# 262487.

The City of Magnolia (the "city"), which you represent, received a request for a list of all calls made from the city manager's city-furnished cell phone during a specified time interval. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.²

We initially note that most of the information at issue is the subject of Open Records Letter No. 2006-10645 (2006). In the previous decision, we concluded that the city-issued cellular phone numbers of the city manager, the city manager's assistant, the city secretary, and the police chief are confidential under section 418.176 of the Government Code and must be withheld from the public under section 552.101 of the Government Code. In that same decision, we also concluded that the city-issued cellular phone numbers of the police

¹ We note that the city's assertion of section 552.136 was not timely under section 552.301 of the Government Code. *See* Gov't Code §§ 552.301, 302. Nevertheless, we will address this exception, which is mandatory and may not be waived. *See id.* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

² This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

lieutenant, the police sergeant, and the city marshal are excepted from disclosure under section 552.108(b)(1) of the Government Code. You do not indicate that there has been any change in the law, facts, and circumstances on which the previous decision is based. We therefore conclude that the city may continue to rely on our rulings under sections 552.101 and 552.108 of the Government Code in Open Records Letter No. 2006-10645. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we address your claim under section 552.136 of the Government Code. This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We agree that the city must withhold the account number that you have marked under section 552.136. We have marked additional information that must also be withheld on this basis.

In summary: (1) the city may continue to rely on our rulings under sections 552.101 and 552.108 of the Government Code in Open Records Letter No. 2006-10645; and (2) the city must withhold the marked account number under section 552.136 of the Government Code.³ The rest of the 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

³ As we are able to make these determinations, we need not address your arguments under sections 552.101 and 552.108.

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).

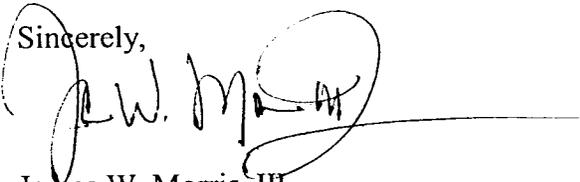
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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 'J.W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 262487

Enc: Submitted documents

c: Mr. Richard L. Anderson
P.O. Box 64
Magnolia, Texas 77353
(w/o enclosures)