



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 11, 2008

Mr. Joseph Harney  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2008-01938

Dear Mr. Harney:

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# 301930.

The City of Corpus Christi (the "city") received a request for the police chief's personal cell phone records for September 15, 2007 pertaining to any police related activity. You claim that the requested information is not subject to the Act. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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:

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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.

- (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.

*Id.* § 552.002; *see also id.* § 552.021. You explain that the police chief, whose records are the subject of this request, maintains a business cellular telephone and personal cellular telephone. You further explain that the personal cellular telephone “was not purchased with public funds and the phone bill records generated by its use are not paid for with public funds.” You state that the police chief pays the bills for the personal cellular telephone with his personal funds and does not receive any reimbursement or allowance from the city for use of the personal cellular telephone. You also state that the personal cellular telephone records are sent to the police chief’s home address, are not collected, assembled, or maintained by or for the city, and the city does not own or have a right of access to the personal cellular phone records. Further, you inform us that the representative sample of cellular telephone records was obtained solely for the purpose of submitting such records to this office for our review with respect to the public information request. Based on your representations, we agree that the personal cellular telephone records at issue are not “public information” under the Act because the records are not collected, assembled, or maintained by or for the city. *See id.* § 552.002. Therefore, the city need not release the requested information.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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,

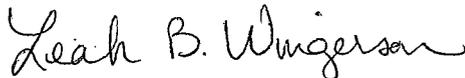
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 301930

Enc. Submitted documents

c: Mr. John Kelley  
We the People News  
P.O. Box 537  
Corpus Christi, Texas 78401  
(w/o enclosures)