



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 24, 2008

Mr. David M. Swope  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2008-03822

Dear Mr. Swope:

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# 305548.

The Harris County Auditor's and Harris County Treasurer's Offices (the "auditor" and the "treasurer") received two requests for information pertaining to the Harris County District Attorney's Office (the "district attorney"). The requests seek 1) cellular phone and pager bills of specified district attorney employees, 2) county car gasoline bills of specified employees and a list of district attorney employees who had gasoline privileges paid by the county or county cars in 2007, and 3) a list of all district attorney employees who carried a county-issued cellular phone, pager, or hand-held device in 2007. You inform our office that the auditor and the treasurer do not have information responsive to item one and have referred the requestors to the district attorney's office to request this information.<sup>1</sup> You state that the information regarding item two has been released to the requestors. You claim that the submitted lists, responsive to item three, contain the numbers assigned to these devices, and the numbers are excepted from disclosure under section 552.108 of the Government Code. However, we determine that only the names of the district attorney employees who have these devices are responsive to item three. Because you do not object to the release of

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

the names, you must release them. The remaining information is not responsive, and this ruling does not address the public availability of any information that is not responsive to the request. The auditor and the treasurer are not required to release non-responsive 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,



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/mcf

Ref: ID# 305548

Enc. Submitted documents

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