



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2009

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

OR2009-11864

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# 353157.

The City of Magnolia (the "city"), which you represent, received a request for cellular telephone bill summary pages for a specified time period. You indicate the city has released some of the requested information to the requestor. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that the submitted information, which consists of invoices for cellular telephones paid for by the city, falls within the scope of section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides for required disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]" unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). Thus, the city must release the invoices under section 552.022(a)(3), unless that information is expressly confidential under other law. Although you seek to withhold portions of the information at issue under section 552.108 of

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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.

the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally) 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the information at issue may not be withheld under section 552.108. However, you also claim that portions of the information at issue are excepted from disclosure under sections 552.101 and 552.136 of the Government Code, which are other law for purposes of section 552.022. Accordingly, we will consider the applicability of these exceptions to the documents at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 of the HSA provides in part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

*Id.* § 418.176(a). The fact that information may relate to a governmental body's security measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under the HSA must be accompanied by an adequate explanation of how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

In this instance, you seek to withhold the cellular telephone numbers of the city administrator, the city secretary, and the city police chief. You state that these individuals "are part of the city's emergency response plan team that responds to terrorist and biological attacks[.]" You further state that the city "relies on the ability to provide vital

information—warnings, alerts, directions, and updates” to personnel through these cellular telephones. Based on your representations and our review of the submitted information, we find that the information you have marked consists of telephone numbers that were collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. *See id.* § 418.176(a)(3). We therefore conclude that the city must withhold the telephone numbers you have marked under section 552.101 in conjunction with section 418.176 of the Government Code.

Next, you assert that the account numbers you have marked are confidential under section 552.136(b) 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.” *Id.* § 552.136. Thus, we agree that these account numbers are subject to section 552.136. Therefore, the city must withhold the account numbers you have marked under section 552.136 of the Government Code.

In summary, the city must withhold the cellular telephone numbers of the city administrator, the city secretary, and the city police chief under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The city must also withhold the account numbers you have marked under section 552.136 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 353157

Enc. Submitted documents

c: Requestor  
(w/o enclosures)