



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2014

Ms. Jo-Christy Brown
Counsel for the City of Lampasas
Law Offices of JC Brown, PC
1411 West Avenue, Suite 100
Austin, Texas 78701

OR2014-11296

Dear Ms. Brown:

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# 527650.

The City of Lampasas (the "city"), which you represent, received a request for specified telephone records during a defined time period. You state the city is releasing some of the requested information. You claim a portion of the responsive information is not subject to the Act. You also claim the remaining requested information is excepted from disclosure under sections 552.103, 552.104, 552.105, 552.109, and 552.110 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted representative sample of a portion of the responsive information.²

¹Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address your argument under section 552.101 of the Government Code.

²We assume 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.

You assert some of the responsive information, including the submitted information, is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

Id. § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You state the submitted information consists of text messages that are purely personal in nature, do not relate to official business of the city, and are therefore not subject to the Act. Based on your representations and our review, we find the submitted information does not constitute public information for purposes of the Act. *See id.* § 552.002; *see also* Open Records Decision No. 635 at 4 (1995)

(section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving no or *de minimis* use of state resources). Therefore, the submitted information is not subject to the Act, and the city is not required to release it in response to this request.

You inform our office the city has not submitted employees' personal telephone records for our review. To the extent the requested employees' personal telephone records do not relate to the official business of the city, they are not subject to the Act and need not be released. However, to the extent the requested employees' personal telephone records relate to the official business of the city, this information is subject to the Act, and must be released unless it is excepted from disclosure. In that instance, we note that, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You inform us the city received this request on April 11, 2014. As of the date of this letter, you have not submitted to this office a copy or representative sample of the personal telephone records that are subject to the Act. Consequently, we find the city has failed to comply with the procedural requirements of section 552.301 with respect to the telephone records at issue.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you assert the information at issue is excepted from disclosure under sections 552.103, 552.104, and 552.105 of the Government Code and privileged under Texas Rule of Evidence 503, these sections and privilege are discretionary in nature and serve only to protect a governmental body's interests. As such, the city's claims under these sections and privilege are not compelling reasons to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 constitutes compelling reason to

withhold information under section 552.302 only if information's release would harm third party), 665 at 2 n.5 (2000) (discretionary exceptions in general), 592 (1991) (stating that governmental body may waive section 552.104), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Thus, in failing to comply with section 552.301, the city has waived its arguments under these sections and privilege and may not withhold the submitted information on those bases. Although sections 552.109 and 552.110 are mandatory exceptions to disclosure that can provide compelling reasons to withhold information, because you have not submitted the personal telephone records that are subject to the Act for our review, we have no basis for finding any of the information confidential. Thus, we have no choice but to order the personal telephone records that are subject to the Act released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, the submitted information is not subject to the Act, and the city is not required to release it in response to this request. To the extent the requested employees' personal telephone records do not relate to the official business of the city, they are not subject to the Act and need not be released. To the extent the requested employees' personal telephone records do relate to the official business of the city, then they are subject to the Act and the city must release them.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 527650

Enc. Submitted documents

c: Requestor
(w/o enclosures)