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ATTORNEY GENERAL OF TEXAS

June 5, 2019

Mr. Elliot M. Barner
Counsel for the Harris County
Emergency Services District No. 11
Radcliffe Bobbitt Adams Polley
2929 Allen Parkway, Suite 3450
Houston, Texas 77019-7120

OR2019-14862

Dear Mr. Barner:

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# 769107 (ORR 00274923).

The Harris County Emergency Services District No. 11 (the "district"), which you represent, received three requests from the same requestor for detailed telephone records pertaining to three commissioners of the district.¹ You claim the submitted information does not consist of public information subject to the Act. We have considered your argument and reviewed the submitted representative sample of information.²

Initially, we note some of the submitted information is not responsive to the present request for information because it does not consist of telephone records. This ruling does not address

¹The district sought clarification of the information requested and received a response. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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.

the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

You argue the submitted information is not public information that is subject to disclosure under the Act. The Act is applicable only to "public information." *See id.* §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, "public information" means 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.

Id. § 552.002(a). Section 552.002(a-1) also provides the following:

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.

Id. § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records No. 462 at 4 (1987). Further, information that is written, produced, collected, assembled, or maintained by an individual officer or employee of a governmental body in the officer's or employee's official capacity may be subject to

disclosure under the Act if the information pertains to official business of the governmental body. Gov't Code § 552.002(a)(3). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

You state the information at issue consists of records from the named individuals' personal cellular telephones. You state the individuals whose information is at issue own the telephones at issue, and the telephones were used solely for private matters that do not pertain to the duties of any district employee. You assert the information at issue was not collected, maintained, or assembled in connection with official district business, the district does not have a right of access to the information at issue, and no district funds were used in connection with the use of the telephones. We reiterate that information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. *See* Gov't Code § 552.002(a). Accordingly, we conclude, to the extent the information in the named individuals' personal telephone records does not relate to district employees acting in their official capacities or the information does not pertain to district business, it is not subject to the Act and need not be released. However, to the extent the information in the named individuals' personal telephone records relates to district employees acting in their official capacities or the information pertains to district business, it is subject to the Act, and must be released unless an exception to disclosure applies to the information. *See id.* §§ 552.301(a), .302.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.³ *See* Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, the district must withhold any home addresses,

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

personal cellular telephone numbers, and any family member information under section 552.117(a)(1) if the employees at issue made timely elections under section 552.024.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded account numbers constitute access device numbers for purposes of section 552.136. Thus, the district must withhold the cellular telephone account numbers under section 552.136 of the Government Code.

In summary, to the extent the information in the named individuals’ personal telephone records does not relate to district employees acting in their official capacities or the information does not pertain to district business, it is not subject to the Act and need not be released. To the extent the information in the named individuals’ personal telephone records relates to district employees acting in their official capacities or the information pertains to district business, (1) the district must withhold any home addresses, personal cellular telephone numbers, and family member information under section 552.117(a)(1) if the employees at issue made timely elections under section 552.024; (2) the district must withhold the cellular telephone account numbers under section 552.136 of the Government Code; and (3) the district must release the remaining information.

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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 769107

Enc. Submitted documents

c: Requestor
(w/o enclosures)