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OPEN RECORDS DIVISION

February 10, 2010

ID# 364835

CERTIFIED MAIL NO. 7007 2680 0001 6173 7070

RETURN RECEIPT REQUESTED

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Abbott,

This letter is in follow-up to my conversation with James L. Coggeshall, Assistant Attorney General, of your office concerning an opinion rendered in connection with your ID#364835. See *OR2009-17908*. I advised Mr. Coggeshall of a concern that this office had with the specified Letter Ruling as it was in direct conflict with a previously rendered opinion (OR2003-2057) related to the exact same category of information, namely, the cellular phone numbers assigned to an account. We were instructed to submit a written request that this Opinion be reconsidered in light of the direct conflict of opinions. Accordingly, we submit the following:

HISTORY

On September 28, 2009, the Montgomery County Precinct 4 Commissioner's Office, the Auditor's Office, and this office, received a written request for the disclosure of information pursuant to the Texas Public Information Act. Mr. Jim Doyle (herein referred to as "Requestor") made the request. On October 12, 2009, pursuant to Section 552.301 of the Government Code, an Attorney General's decision was requested by this office on whether the information requested is excepted from disclosure.

In his request, Mr. Doyle sought:

"... a copy of all January 2008 through June 2009 telephone bills (land and cellular) paid by Montgomery County for telephone use by the office of Montgomery County Commissioner Precinct 4. The record requested is the complete, original bill issued by the phone companies pertaining to all telephone activity, including date, time, number called, location, minutes, charges, etc."

It was our belief that the information requested consisted of public information **WITH THE EXCEPTION OF** the cellular phone numbers assigned to the account, as well as the account number itself. While the withholding of the account number was affirmed pursuant to Section 552.136 of the Government Code, the withholding of the assigned cellular numbers was denied.

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**PRIOR RULING/AUTHORIZATION TO WITHHOLD
CELLULAR NUMBERS ASSIGNED**

In 2003, the Montgomery County Auditor's Office received a request for information submitted by The Courier for a copy of the cellular phone records of County Commissioner Ed Rinehart, then District Attorney, Mike McDougal, and then Sheriff, Guy Williams. In response, this office sought an opinion to withhold the account number and cellular phone numbers assigned to the accounts, citing Section 552.108 of the Government Code as basis.

In ORD-506 (1988), it was determined that the telephone numbers of employees with "specific law enforcement responsibilities" was excepted from public disclosure. Law enforcement duties include protecting the public and ensuring public safety. The Commissioner's Office is responsible for maintaining the roadways within that precinct at all times, including during emergencies and natural disasters. The County Commissioner and/or his employees are required to replace road signs, post bridge-out signs, remove downed trees, or place road signs to redirect traffic often after normal business hours. This facilitates law enforcement. The Commissioner's road foremen, literally, sleep with the cell phone beside their bed when bad weather is expected, so they can quickly respond to dangerous road conditions. Again, this clearly enables law enforcement.

After 9/11, New York Mayor Rudy Gulliani personified the critical role that elected officials play after a disaster. A Commissioner is on the critical response team after a terrorist attack. He must be immediately available to local and national authorities. His cell phone cannot be monopolized by local citizens at this critical time. The land-based phone system might be inoperable, but usually the cell phone is working.

During a natural disaster, the County Commissioner is vital to the coordination and delivery of services to the public. The Commissioner could not use his phone if every citizen had his cell number to call every time it floods in this county. The official needs unfettered access to law enforcement and emergency management personnel to help restore peace and order in such situations. Every commissioner has an office number and can be reached during business hours.

After presenting these arguments, Assistant Attorney General W. Montgomery Meitler rendered OR2003-2057, wherein it was determined:

"... the County Auditor may withhold pursuant to section 552.108(b)(1) the cellular and other county telephone numbers of officials and employees with specific law-enforcement responsibilities, including the cellular telephone numbers of the county commissioner ..."

and that

"... After considering your arguments, we conclude that you have demonstrated that the cellular telephone numbers assigned to the county commissioner ... may be withheld from the requestor pursuant to Section 552.108(b)(1)."

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CURRENT RULING

Now, in response to the request for information submitted by Jim Doyle for the **exact same information**, with the only difference in the records being the months/year of the records sought, Assistant Attorney General Leah B. Wingerson has rendered OR2009-17908 denying our request to withhold the assigned cellular phone numbers, and cites Section 552.022 of the Government Code, stating, in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

We do not believe that the information we seek to withhold (the cellular phone numbers assigned to the account) falls under Section 552.022(a)(3). The assigned cellular phone numbers do not relate to the expenditure of public/other funds by a governmental body; the itemized statement itself does. This statute was intended to allow the public access to records showing how public funds were being utilized and spent, which will clearly still be accomplished by providing the Requestor with a copy of the itemized statements, as requested, but without the cellular phone numbers.

It could conceivably be argued that the cellular phone number itself should be confidential and excepted from disclosure by Section 552.136 of the Government Code, which makes confidential account numbers, access device numbers, etc., used to gain access to money and/or goods/services. Theoretically, it can be argued that through the phone numbers assigned to the account, the employees of the County are accessing goods/services, and incurring fees which must be paid for by the County, much like a credit card or bank account/routing number does. If such a broad interpretation of Section 552.022(a)(3) is going to be used to make the cellular phone numbers available, then the same broad interpretation of Section 552.136 should be applied, as well.

We would further point to the fact that Section 552.022 was originally added to the Government Code by the 73RD Legislature in 1993, with the last amendment made by the 76TH Legislature in 1999. Therefore, this provision was clearly in effect in 2003 when it was determined by AGA Meitler was excepted from public disclosure by Section 552.108 of the Government Code. To now re-interpret Section 552.022(a)(3) and render a ruling contrary to OR2003-0257 puts the County and, in fact, **ALL** Texas counties at a great disadvantage during a natural disaster as it will make it impossible for government officials to try to tend to the needs of their County and restore order.

We, therefore, respectfully request that your office reconsider the ruling of OR2009-17908 and uphold the prior ruling of OR2003-2057 and authorize this Office to withhold the cellular numbers assigned to the account. We are enclosing a copy of the current request at issue (see

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attached *Exhibit "A"*), a representative sample of the responsive records as they comprise of over 1,000 pages (see attached *Exhibit "B"*), a copy of OR2003-2057 (see attached *Exhibit "C"*), and a copy of OR2009-17908 (see attached *Exhibit "D"*) for your reference.

If you have questions or need further information, please do not hesitate to contact my legal assistant, Angela Walker, at (936)539-7828.

Sincerely,

MONTGOMERY COUNTY
ATTORNEY'S OFFICE

By: 

Sara Forlano,
Assistant County Attorney

SF/aw
Enclosures

cc: Mr. Jim Doyle
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Conroe, Texas 77385