



# David K. Walker

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## OPEN RECORDS DIVISION

October 19, 2009

**ID# 364835**

**CERTIFIED MAIL NO. 7007 2680 0001 6173 5557**

**RETURN RECEIPT REQUESTED**

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

Dear General Abbott,

On September 28, 2009, the Montgomery County Precinct 4 Commissioner's Office, the Auditor's Office, and this office, received the enclosed request for the disclosure of information pursuant to the Texas Public Information Act.<sup>1</sup> Mr. Jim Doyle (herein referred to as "Requestor") made the request. A copy of this request is enclosed and marked as *Exhibit "A"*. 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.<sup>2</sup> A copy of this request is enclosed and is marked as *Exhibit "B"*.

In his request, Mr. Doyle seeks:

*"... 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."*

### Analysis

Montgomery County admits that if a county pays for cell phones, then those numbers would be information collected and maintained to use in conducting public business. The information would be public information subject to disclosure unless an exception applies. The County believes that exceptions do apply.

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<sup>1</sup> This office has ten business days to request an opinion. TEX. GOV'T CODE ANN. § 552.301(b) (Vernon Supp. 2004). The request is timely if postmarked on or before October 12, 2009. TEX. GOV'T CODE ANN. § 552.308 (Vernon Supp. 2004).

<sup>2</sup> This office has fifteen business days from the date the request was received to submit the materials for review. This submission is timely if postmarked on or before October 19, 2009. TEX. GOV'T CODE ANN. § 552.308 (Vernon Supp. 2004).

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In 2003, the Montgomery County Auditor's Office received a request for this same category of information as it pertained to County Commissioner Ed Rinehart, then District Attorney, Mike McDougal, and then Sheriff, Guy Williams. In response, this office sought to withhold the cellular telephone numbers assigned to these individuals, citing Section 552.108(b)(1) of the Government Code as the basis. In response to our request, 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 ..."*

See Exhibit "C" attached hereto.

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. In OR2003-2057, your office determined 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)."*

Additionally, contained within the responsive information is the assigned account number. This information is excepted from public disclosure pursuant to Section 552.136 of the Government Code, which provides that:

*a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:*

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*(1) obtain money, goods, services, or another thing of value; or*

*(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.*

*(b) Notwithstanding 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.*

While not previously asserted, the account number assigned to the cellular telephone bill of the Precinct 4 Commissioner is confidential and must be withheld as a matter of law.

Due to the voluminous nature of the information responsive to this request (an estimated 1,185 pages), a representative sample of the cellular telephone bills is being enclosed herewith for review. See *Exhibit "D"*. As the factual basis for withholding the submitted cellular telephone numbers remain the same, we would ask that your office reaffirm this ruling and authorize the withholding of the cellular numbers assigned to the various accounts paid for by Montgomery County.

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: David K. Walker  
David K. Walker,  
County Attorney

DKW/aw  
Enclosures

cc: Mr. Jim Doyle  
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