



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 22, 2016

Ms. Audrey R. Shakra  
Counsel for Lee College  
Thompson & Horton LLP  
3200 Southwest Freeway, Suite 2000  
Houston, Texas 77027

OR2016-06536

Dear Ms. Shakra:

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# 602300.

Lee College (the "college") received a request for checks issued by Durotech, Inc. ("Durotech"), regarding the Rundell Hall Renovation. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Durotech. Accordingly, you state, and provide documentation showing, you notified Durotech of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Durotech. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We 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.

Initially, we address Durotech's assertion 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 of the Government Code defines "public information" as:

(a) [I]nformation 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.

*Id.* § 552.002(a), (a-1). 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). The Act also encompasses information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); see Open Records Decision No. 462 at 4 (1987). Information is "in connection with the transaction of official business" if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body.

*See* Gov't Code § 552.002(a-1). 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).

We further note the characterization of information as “public information” under the Act is not dependent on whether the requested records are in the possession of an individual or whether a governmental body has a particular policy or procedure that establishes a governmental body’s access to the information. *See* Open Records Decision No. 635 at 3-4 (1995) (finding information does not fall outside definition of “public information” in Act merely because individual member of governmental body possesses information rather than governmental body as whole). Thus, if the information at issue is related to the college’s business, the mere fact it is not in the college’s possession does not remove the information from the scope of the Act. *See* ORD 635 at 6-8 (stating information maintained on a privately-owned medium and actually used in connection with the transaction of official business would be subject to the Act).

Durotech argues the submitted information is not “public information” subject to the Act because Durotech owns the information and Durotech is not a governmental body. The college acknowledges Durotech holds the information at issue and states the information was not in the college’s possession at the time the college received the request for information. However, the college states it entered into a contract with Durotech to renovate Rundell Hall. We note the college has submitted a copy of the contract between Durotech and the college. The submitted contract provides the college shall be afforded access to Durotech’s records and accounts pertaining to the renovation. We note the submitted information consists of a check for services pertaining to the renovation. We also note Durotech provided the submitted information to the college for purposes of the college requesting a ruling from this office regarding the present request for information. Upon review, we find the submitted information constitutes “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” for the college and the college has a right of access to the submitted information. *See* Gov’t Code § 552.002. Therefore, the submitted information constitutes public information subject to the Act and may only be withheld if an exception to disclosure under the Act applies.<sup>2</sup>

Section 552.136 of the Government Code 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. Accordingly, we find the college must withhold the redacted bank account and

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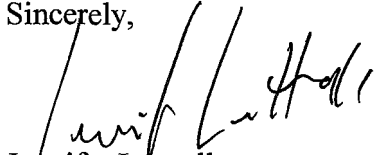
<sup>2</sup>As we are able to make this determination, we need not consider whether Durotech is a governmental body for purposes of the Act.

routing numbers 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 602300

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)