



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 25, 2017

Mr. Todd Fitts  
Counsel for the City of Marshall  
Todd Fitts Attorney at Law  
110 West Fannin Street  
Marshall, Texas 75670

OR2017-08719

Dear Mr. Fitts:

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# 654880.

The City of Marshall (the "city"), which you represent, received a request for (1) all Marshall Police Department (the "department") policies and standard operating procedures pertaining to global positioning system tracking devices, (2) e-mails sent to or from specified e-mail addresses pertaining to specified topics during specified time periods, and (3) information pertaining to grants or donations awarded to the city or department. You state the city has no information responsive to a portion of the request.<sup>1</sup> You also state the city released most of the requested information. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The Act applies to "public information," which is defined in section 552.002(a) of the Government Code as

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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; or
- (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.

Gov't Code § 552.002(a). Information is "in connection with the transaction of official business" if it 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 government 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).

You state the submitted information consists of information obtained from a city employee's personal e-mail conversations and is not public information. Further, you state the information at issue consists of communications that are purely personal in nature. Thus, you assert this information does not concern the business of the city and was not written, produced, collected, assembled, or maintained pursuant to any law or ordinance or in connection with the transaction of the city's business. Based on these representations and our review of the submitted information, we find the submitted information does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the city. Accordingly, we conclude the submitted information is not subject to the Act and the

city is not required to release the submitted information in response to the request for information.<sup>2</sup>

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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/sb

Ref: ID# 654880

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As we are able to make this determination, we need not address your remaining argument against the disclosure of this information.