



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2017

Ms. Haley Turner
Counsel for the Marble Falls Independent School District
Walsh Gallegos Treviño Russo & Kyle P.C.
P.O. Box 2156
Austin, Texas 78768

OR2017-11337

Dear Ms. Turner:

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# 661166.

The Marble Falls Independent School District (the "district"), which you represent, received a request for the internet cache and related log activity information pertaining to the district's superintendent. The district states it has released some of the requested information, but claims the submitted information is not subject to the Act. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The Act is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines "public information" as the following:

¹We 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 those records contain substantially different types of information than that submitted to this office.

(a) [I]nformation that 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 Decision 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). 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 id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides, unless otherwise expressly provided by law, it is the policy of this state that each person is entitled at all times to complete information about the affairs of government and the official acts of public officials and employees. *See Gov't Code* § 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)* (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); *see also Open Records Decision No. 425 at 2-3 (1985)* (information sent to individual school trustees’ homes was public information because it related to official business of governmental body) (overruled on other grounds by *Open Records Decision No. 439 (1986)*). Thus, if the information at issue is related to the district’s business, the mere fact it is not in the district’s possession does not remove the information from the scope of the Act. *See ORD 635 at 6-8* (information maintained on a privately-owned medium and actually used in connection with transaction of official business would be subject to the Act).

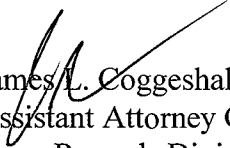
The district explains the internet cache at issue is on the superintendent’s personal devices, and not in the district’s physical possession. The district also informs us it does not have a right of access to the superintendent’s internet cache or his personal devices. The district asserts it “does not use the cache or information obtained from the cache for any purpose related to school business.” However, we reiterate 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)(3). Therefore, to the extent the requested information relates to the official business of the district, it is subject to the Act and, as the district has not claimed any exception to disclosure, the district must release it. *See id.* §§ 552.301 (a), .302. However, to the extent the requested information does not relate to the official business of the district, it is not subject to the Act and the district is not required to release it in response to this request.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 661166

Enc: Submitted documents

c: Requestor
(w/o enclosures)