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ATTORNEY GENERAL OF TEXAS

June 12, 2017

Mr. Joey Moore
Counsel for Marble Falls Independent School District
Walsh Gallegos Treviño Russo & Kyle P.C.
P.O. Box 2156
Austin, Texas 78768

OR2017-12872

Dear Mr. Moore:

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# 661807.

The Marble Falls Independent School District (the "district"), which you represent, received a request for a named individual's cellular and office telephone bills. You state you do not have information responsive to a portion of the request.¹ You claim the submitted information is not subject to the Act. In the alternative, you claim some of the submitted information is excepted from disclosure under sections 552.117 and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

Initially, we address the district's assertion the submitted information is not subject to the Act because it is not "public information." The Act applies only to public information. Gov't Code § 552.021. Section 552.002 of the Act defines "public information" as the following:

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;
- (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 information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* 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 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 that 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 that 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 (1985) (concluding, among other things, that 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 (stating that information maintained on a privately-owned medium and actually used in connection with the transaction of official business would be subject to the Act).

You contend the submitted information is not public information as defined by section 552.002. You explain the named individual's personal mobile phone is not in the district's "physical possession, nor is it collected, assembled or maintained by or for the [d]istrict." Additionally, you state the district "does not use the mobile phone bill for any purpose related to school business." Although you generally assert the submitted information relates to purely private and personal matters unrelated to official district business, you nevertheless acknowledge the named individual occasionally uses his personal cellular telephone while performing his job duties. We reiterate that information is within the scope of the Act if it relates to the official business of a government body and is maintained by a public official or employee of the governmental body. *See* Gov't Code § 552.002(a). Based on your representations and our review, we find the information you have marked does not constitute public information for purposes of section 552.002 of the Government Code. *See* ORD 635 at 4. Therefore, this information is not subject to the Act, and the district need not release it in response to this request.³ Furthermore, to the extent the remaining information in the named individual's personal cellular telephone bills does not relate to the named individual's use of his personal cellular telephone while performing his

³As we are able to make this determination, we need not address your remaining arguments for this information.

job duties, it is not subject to the Act and need not be released. However, to the extent the remaining information in the named individual's personal cellular telephone bills relates to the named individual's use of his personal cellular telephone while performing his job duties, it is subject to the Act, and must be released unless an exception to disclosure applies to the information. *See* Gov't Code §§ 552.301 (a), .302.

To the extent the remaining information in the named individual's cellular telephone bills relate to official business of the district and are subject to the Act, we will address your arguments under sections 552.117 and 552.136 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You state the individual whose information is at issue timely elected to withhold his information. Therefore, the district must withhold the information you marked under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code provides "[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." Gov't Code § 552.136. Accordingly, we find the district must withhold the cellular telephone account number you marked under section 552.136 of the Government Code.

In summary, the information you marked is not subject to the Act, and the district need not release it in response to this request. To the extent the remaining information in the named individual's personal cellular telephone bills do not relate to the official business of the district, they are not subject to the Act and need not be released. However, to the extent the remaining information in the named individual's personal cellular telephone bills relate to the official business of the district, they are subject to the Act. In that event, the district must withhold the information you marked under section 552.117(a)(1) of the Government Code and the district must withhold the information you marked under section 552.136 of the Government Code. The district must release the remaining information.

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,



Emily Buchanan
Assistant Attorney General
Open Records Division

EB/eb

Ref: ID# 661807

Enc. Submitted documents

c: Requestor
(w/o enclosures)