



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2017

Ms. Anne-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2017-25184

Dear Ms. Sheely:

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# 682728.

The Travis County Attorney's Office (the "county") received a request for two specified requests for information previously submitted to the county by the requestor.¹ You state the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered your arguments and reviewed the submitted information.

Initially, you contend 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(a) defines "public information" as the following:

¹As you have not submitted a copy of the written request for information, we take our description of the request from your brief.

²We note, and you acknowledge, the county did not comply with the requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

[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.

Id. § 552.002(a). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). *But see* Open Records Decision No. 635 at 4 (1995) (Gov't Code § 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). You inform us the submitted information consists of communications the requestor submitted to the county as requests for information and which the county was required to accept. Upon review of your representations and the documents at issue, we find the submitted communications were created by, transmitted to, received by, or maintained by officers and employees of the county in their official capacity, and the communications pertain to official business of the governmental body. Accordingly, we find the submitted information consists of information that is maintained by the county for the transaction of official business of the county. Thus, the submitted information is subject to the Act and must be released, unless the information falls within an exception to public disclosure under the Act.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with confidentiality provisions found in chapter 55 of the Code of Criminal Procedure for a portion of the requested information. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

(1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has determined records subject to an expunction order are not subject to public disclosure under the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You inform us the submitted information contains an expunction order that was submitted to the county by the requestor. You seek to withhold that information under article 55.03 of the Code of Criminal Procedure. Upon review, we agree the information at issue, which we have marked, is confidential under article 55.03 of the Code of Criminal Procedure, and the county must withhold it on that basis under section 552.101 of the Government Code. However, upon review, we find the remaining information does not consist of records subject to an expunction order and may not be withheld under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, the county must release the remaining information.³

³We note the information being released contains an e-mail address to which the requestor has a right of access under section 552.137(b) of the Government Code. *See* Gov’t Code § 552.137(b). However, Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold specific categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public under section 552.137 of the Government Code. Thus, if the county receives another request for this same information from a person who does not have a right of access to it, Open Records Decision No. 684 authorizes the county to redact the requestor’s e-mail address without the necessity of requesting an attorney general decision.

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 682728

Enc. Submitted documents

c: Requestor
(w/o enclosures)