



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2017

Ms. Jordan M. Powell
Assistant District Attorney
Caldwell County District Attorney's Office
1703 South Colorado Street, Box 5
Lockhart, Texas 78644

OR2017-28400

Dear Ms. Powell:

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# 689325.

Caldwell County (the "county") received a request for the telephone records of three named individuals on the Host Agreement Committee (the "committee") during a specified time period. You claim the committee is not a governmental body subject to the Act. You also claim the requested information is not subject to the Act. We have considered the submitted arguments.

Initially, you assert the committee is not a governmental body that is subject to the Act. You state the committee is comprised of private citizens and two county commissioners. You also state the committee does not have any rulemaking power and does not spend any public funds. We note the Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code, which includes several enumerated kinds of entities. Gov't Code § 552.003(1)(A). Upon review, we find the committee was established by and is part of the county, which is a governmental body. *See id.* § 552.003(1)(A)(i). Thus, we conclude the information at issue is subject to public disclosure, unless it is confidential or excepted from disclosure under an exception to the Act.

Next, you assert the requested information does not consist of public information that is subject to disclosure under the Act. The Act is applicable only to “public information.” See *id.* §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, “public information” means 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 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 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 county's business, the mere fact it is not in the county'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 state the named individuals own the telephones at issue and use the personal telephones for private matters. You also state the requested information was not collected, maintained, or assembled in connection with official county business, nor does the county have a right of access to the information at issue. We reiterate that 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)*. Upon review, to the extent the information in the named individuals' personal telephone records does not relate to their use of their personal telephones while performing their committee duties, it is not subject to the Act and need not be released. However, to the extent the information in the named individuals' personal telephone records does relate to their use of their personal telephones while performing their committee duties, it is subject to the Act, and must be released unless an exception to disclosure applies to the information. *See id.* §§ 552.301 (a), .302.

We must address the county's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office

to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). In this instance, you state, and provide documentation showing, the county received the first two requests for information on October 5, 2017, and the third request for information on October 6, 2017. As of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested. Consequently, we find the county failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Because the county has not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, to the extent the information in the named individuals' personal telephone records does not relate to their use of their personal telephones while performing their committee duties, it is not subject to the Act and need not be released. However, to the extent the information in the named individuals' personal telephone records does relate to their use of their personal telephones while performing their committee duties, it is subject to the Act, and must be released pursuant to section 552.302 of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 689325

c: Requestor