



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2018

Ms. Jennifer Burnett
General Counsel
University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2018-00762

Dear Ms. Burnett:

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# 692105 (OGC# 177668).

The University of Texas Health Science Center at San Antonio (the "university") received a request for all documents created or maintained by a named individual and all communications sent to or received by a named individual regarding specified topics.¹ You state you have released some information to the requestor. You state you have no information responsive to a portion of the request.² You claim the submitted information is not subject to the Act. We have received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be

¹We note the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We further note the requestor modified his request in response to a cost estimate. *See* Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

²The 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).

released). We have considered the submitted arguments and reviewed the submitted representative sample of information.³

You argue 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:

[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 of the information in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.*; see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information is subject to the Act even if a governmental body does not physically possess it as long as it is written, produced, 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). Thus, information written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. See ORD 462; cf. ORD 499.

You inform us the submitted information consists of communications sent to or received by a university employee “in his capacity as an expert in the field of forensic odontology,

³We 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 that those records contain substantially different types of information than that submitted to this office.

conference speaker, or member of a professional organization.” You state the communications at issue do not relate to the university and are not related to the employee’s official duties as an employee of the university. You further state this information is not collected, assembled, or maintained pursuant to any law or ordinance or in connection with the transaction of university business. You inform us the university has a policy that allows for incidental use of e-mail, and you state the expenditure of state resources to create the information was *de minimis*. Based on your representations and our review of the information at issue, we find the submitted information does not constitute public information for purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 4 (1995) (section 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). Therefore, we conclude the submitted information is not subject to the Act and need not be released in response to the present request for 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 692105

Enc. Submitted documents

c: Requestor
(w/o enclosures)