



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 11, 2019

Ms. Michele Freeland  
Office of General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2019-03936

Dear Ms. Freeland:

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# 749945 (PIR# 18-8304).

The Texas Department of Public Safety (the "department") received a request for all communications between two named individuals during a period of time and specified disciplinary information pertaining to a named individual.<sup>1</sup> You claim the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted information.

Initially, we note the department has not submitted any information pertaining to the disciplinary records specified in the request. Further, we also note the department has only submitted twelve e-mails between the named individuals in response to the present request for information. To the extent any additional information responsive to the request existed on the date the department received the request, we assume the department has already released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000)

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<sup>1</sup>We note the department received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

(if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

You argue the submitted information is not subject to the Act. The Act is only applicable to “public information,” which is defined in section 552.002(a) of the Government Code as follows:

[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.

Gov’t Code § 552.002(a). Information is “in connection with the transaction of official business” if it 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 government 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 is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). 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).

You assert the submitted information is not subject to the Act because it consists of personal e-mails sent or received by employees and related to personal matters. You also state the communications do not relate to the transaction of official business of the department but, rather, pertain to personal affairs. Based on your representations and our review of the information at issue, we agree some of the submitted information, which we have indicated,

does not constitute “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the department. *See id.* § 552.002. Thus, we conclude the e-mails we indicated are purely personal in nature do not constitute public information for purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 7 (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). Accordingly, the department is not required to release the information we indicated in response to the present request. However, upon review, we find the remaining information at issue relates to the transaction of the official business of the department. Thus, we find the remaining information is subject to the Act and the department must release it, unless the information falls within an exception to public disclosure under the Act. *See* Gov’t Code §§ 552.006, .021, .301, .302.

Section 552.117 of the Government Code may be applicable to some of the remaining information.<sup>2</sup> Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. *Id.* § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *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). It is unclear whether the department employee at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the cellular telephone number we marked under section 552.117(a)(2) pertains to an employee that is a currently licensed peace officer as defined by article 2.12 and the cellular telephone service was not paid for by a governmental body, then the department must withhold this information under section 552.117(a)(2) of the Government Code.

However, if the employee is not a currently licensed peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Further, section 552.117(a)(1) may be applicable to additional information. Section 552.117(a)(1) 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 of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). 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

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

552.117(a)(1) only on behalf of a current or former employee 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. Therefore, if the cellular telephone numbers we marked pertain to an employee that timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service was not paid for by a governmental body, then the department must withhold this information under section 552.117(a)(1) of the Government Code. However, if the cellular telephone numbers we marked do not pertain to an employee that timely requested confidentiality under section 552.024 of the Government Code or the cellular telephone service was paid for by a governmental body, then the department may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

In summary, the information we indicated does not consist of public information subject to the Act for purposes of section 552.002 of the Government Code, and the department is not required to release such information in response to this request. If the cellular telephone number we marked under section 552.117(a)(2) pertains to an employee that is a currently licensed peace officer as defined by article 2.12 and the cellular telephone service was not paid for by a governmental body, then the department must withhold this information under section 552.117(a)(2) of the Government Code. If the cellular telephone numbers we marked pertain to an employee that timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service was not paid for by a governmental body, then the department must withhold this information under section 552.117(a)(1) of the Government Code. The department 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](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,



Blake Brennan  
Attorney  
Open Records Division

BB/eb

Ref: ID# 749945

Enc. Submitted documents

c: Requestor  
(w/o enclosures)