



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2019

Mr. Adam J. Matlock
Assistant County Attorney
Chambers County
P.O. Box 1200
Anahuac, Texas 77514

OR2019-10039

Dear Mr. Matlock:

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# 759172.

Chambers County (the "county") received a request for five categories of information pertaining to a specified incident and specified phone records. The county claims some of the requested information is either not subject to the Act or, alternatively, is excepted from disclosure under section 552.101 of the Government Code. We have considered the county's submitted arguments.

The county asserts the requested information pertaining to phone records of the county judge at issue constitutes judicial records not subject to the Act. The Act is applicable to information "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[.]" Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor

to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). Rule 12 of the Rules of Judicial Administration governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12.1, 12.3; Gov't Code §§ 552.003(a)(B), .0035(a). Rule 12.2 of the Rules of Judicial Administration defines a "judicial record" as "a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function[.]" TEX. R. JUD. ADMIN. 12.2(d).

The county contends the requested information pertaining to phone records of the county judge at issue constitutes judicial records maintained by the county on behalf of the judiciary. Based upon the county's representation, we conclude the information pertaining to phone records of the county judge at issue are not subject to the Act and need not be released under the Act.¹

We must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must 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. *See id.* § 552.301(e). The county received the request for information on January 22, 2019. The county does not inform us it was closed for any business days between January 22, 2019 and February 12, 2019. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the county was required to provide the information required by section 552.301(b) by February 5, 2019. Moreover, the county was required to provide the information required by section 552.301(e) by February 12, 2019. However, the envelope in which the county provided the information required by section 552.301(b) was postmarked February 6, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, as of this date, the county has not submitted to this office a copy or representative sample of the remaining requested information. Consequently, we conclude the county failed to comply with the procedural requirements mandated by section 552.301.

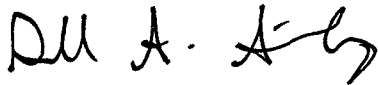
¹As we are able to make this determination, we need not address the county's remaining argument against disclosure of this information.

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 remaining requested information for our review, we have no basis for finding any of this information excepted from disclosure. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302. If the county believes this information may not lawfully be released, the county must challenge this ruling in court pursuant to section 552.324 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 759172

c: Requestor