



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2019

Ms. Mariana G. Evans
Counsel for Fort Bend Independent School District
Rogers Morris & Grover
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2019-14232

Dear Ms. Evans:

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# 767642.

The Fort Bend Independent School District (the "district"), which you represent, received multiple requests from the same requestor for phone records, excluding personal phone calls, pertaining to ten named individuals during a defined time period. You argue the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted representative sample of information.¹

You argue the submitted information is not subject to the Act. The Act is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines "public information" as the following:

¹We 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.

[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.* § 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, 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).

We further note 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) (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 at 2-3 (1985) (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 district's business, the mere fact it is not in the district's possession does not remove the information from the scope of the Act. *See* ORD 635 at 6-8 (information maintained on a privately-owned medium and actually used in connection with transaction of official business would be subject to the Act).

The district informs us the submitted information consists of logs of personal cellular telephone calls from district employees from the employees' personal cellular telephones. The district states the personal cellular telephones are not paid for by the district and the logs at issue are not collected, assembled, or maintained by the district. The Act is applicable to "public information." *See* Gov't Code § 552.021. Although you assert the district does not collect, assemble, or maintain the information at issue nor does it own or have a right of access to the information, you do not explain whether the information at issue was made in connection with the transaction of public business of the district. A governmental body may not circumvent the applicability of the Act by conducting official public business in a private medium. *See* ORDs 635 at 12, 425 at 2. Thus, to the extent the telephone calls at issue were made in connection with the transaction of public business of the district, this information is subject to the Act, and must be released unless it is excepted from disclosure. To the extent the information at issue was not made in connection with the transaction of public business of the district, it is not subject to the Act and need not be released.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/gw

Ref: ID# 767642

Enc. Submitted documents

c: Requestor
(w/o enclosures)