



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 19, 2019

Ms. Paige H. Saenz  
Counsel for the City of Leander  
The Knight Law Firm, L.L.P.  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2019-19816

Dear Ms. Saenz:

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# 776200.

The City of Leander (the "city"), which you represent, received a request for all e-mails involving several named individuals during a specified time period that include specified terms. The city argues the submitted information does not consist of public information subject to the Act. In the alternative, the city claims some of the submitted information is exempted from disclosure under section 552.137 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The city argues the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as

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; or
- (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). 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). The Act can also encompass information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). 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). Moreover, section 552.001 of the Act provides 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).


The city explains the submitted information was created and is maintained by a city council member on the council member's private e-mail account. We understand the submitted information constitutes a personal exchange involving the council member and that the communication was not made in the council member's official capacity. Based on the city's 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. Thus, we conclude the submitted information is not subject to the Act and need not be released in response to this request.<sup>1</sup>

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/gw

Ref: ID# 776200

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As we are able to make this determination, we need not address the city's remaining arguments against disclosure.