



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2019

Ms. Courtney M. White
Assistant City Attorney
City of Amarillo
P. O. Box 1971
Amarillo, Texas 79105-1971

OR2019-20361

Dear Ms. White:

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# 777187 (PIR Nos. P001842, P001843, P001844, P001845, and P001846).

The City of Amarillo (the "city") received five requests from the same requestor for the public calendars of five city officials.¹ You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.152 of the Government Code. We have considered your arguments you claim and reviewed the submitted representative sample of information.²

Initially, you argue the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002(a) of the Government Code as

¹We note the city 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 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).

²We 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 those records contain substantially different types of information than that submitted to this office.

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). 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. *See* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

You inform us the information at issue contains city officials' personal calendar entries that do not relate to the city's transaction of official business and do not relate to the performance of official duties. You inform us some of the information is private in nature and relates to family and social appointments and activities that do not concern the business of the city. You argue this information was not written, produced, collected, or assembled and is not maintained pursuant to any law or ordinance or in connection with the transaction of the city's business. You state the city's policy allows for incidental use of technology resources by employees and officials. Based on your representations and our review of the information at issue, we agree some of the information at issue, 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 city. *See* Gov't Code § 552.002. Therefore, we conclude the calendar entries that 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 city is not

required to release the information we have indicated in response to the request for information. However, upon review, we find the remaining information at issue relates to the transaction of the official business of the city. Thus, we find the remaining information is subject to the Act and the city 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.

The city seeks to withhold the responsive information under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. Upon review, we find the city has failed to demonstrate release of any of the responsive information would subject an employee of the city to a substantial threat of physical harm. Thus, the city may not withhold any of the responsive information under section 552.152 of the Government Code.

In summary, the city is not required to release the information we have indicated in response to the request for information. The city must release the responsive 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/jxd

Ref: ID# 777187

Enc. Submitted documents

c: Requestor
(w/o enclosures)