



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2019

Ms. Stephanie Storm
City Secretary's Office
City of Wylie
300 Country Club Road # 100
Wylie, Texas 75098

OR2019-20417

Dear Ms. Storm:

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# 776912.

The City of Wylie (the "city") received a request for all e-mails received by a named city official during a specified time period. You state the city will release some information upon payment of costs. You claim some of the submitted information is excepted from disclosure under section 552.148 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Baylor Scott & White Health ("Baylor"). Accordingly, you state, and provide documentation showing, the city notified Baylor of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Baylor. We have considered the submitted arguments and reviewed the submitted information.

Initially, Baylor argues a portion of 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 of the Government Code defines "public information" as the following:

[I]nformation that 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). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information 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 governmental 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, 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). Baylor contends the information at issue was e-mailed by a Baylor representative to the named city official in the city official's capacity as the Chair of the fiduciary Governing Board of Baylor Scott & White Medical Center - Lake Pointe, and not in performance of his duties for the city. Thus, Baylor asserts the information at issue was not written, produced, collected, assembled, or maintained in connection with the transaction of any official business of the university. Having considered the arguments and reviewed the information at issue, we find this information, which we marked, was not "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. Gov't Code § 552.002; *see* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). We therefore conclude the information we marked is not subject to the Act and

the city is not required to release this information in response to the instant request for information.¹

Section 552.148 of the Government Code provides the following:

- (a) In this section, “minor” means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:
 - (1) the name, age, home address, home telephone number, or social security number of the minor;
 - (2) a photograph of the minor; and
 - (3) the name of the minor’s parent or legal guardian.

Gov’t Code § 552.148. You state the remaining information consists of communications that identify minors. We understand the information at issue relates to the participation by these minors in city recreational programs or activities. Upon review, we find the city must withhold the information we marked under section 552.148 of the Government Code. However, we find none of the remaining information consists of personal information maintained by the city pertaining to a minor for purposes of section 552.148 of the Government Code, and the city may not withhold it on that basis.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the information we marked is not subject to the Act and the city is not required to release this information in response to the instant request for information. The city must withhold the information we marked under section 552.148 of the Government Code. The

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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

city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The city 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, 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 776912

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)