



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2019

Ms. Sarah W. Langlois
Counsel for the Sheldon Independent School District
Karczewski Bradshaw Spalding Nichols Lamp Langlois
3700 Buffalo Speedway, Suite 560
Houston, Texas 77098

OR2019-22748

Dear Ms. Langlois:

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# 781113.

The Sheldon Independent School District (the "district"), which you represent, received a request for two categories of information pertaining to the employment of three named individuals by either of two specified companies. You state the district has released some information. You state the district has no information responsive to a portion of the request.¹ You claim the remaining requested information is not public information that is subject to the Act. Additionally, you state release of the remaining requested information may implicate the proprietary interests of Durotech, Inc. ("Durotech") and Dailey Electric. Accordingly, you state the district notified these third parties of the request and of the right to submit arguments to this office as to why the requested 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 Durotech. We have considered the submitted arguments. We have also received and considered comments submitted by the requestor. *See Gov't*

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

We note the Act applies only to public information. Section 552.002(a) of the Government Code defines “public information” 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;
- (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. Thus, information requested of a governmental body is subject to the Act even if the governmental body does not physically possess the information, if the information is collected, assembled, or maintained for a governmental body and the governmental body owns the information or has a right of access to the information.

You state the requestor seeks information regarding payroll records of contractors that are engaged in work on a public works project. Chapter 2258 of the Government Code is applicable to prevailing wage rates for public works projects. Section 2258.021(a) provides that workers, laborers, or mechanics employed by or on behalf of the state or a political subdivision of the state shall be paid “not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed[.]” *Id.* § 2258.021(a). Section 2258.024 requires the contractor and each subcontractor to keep a record of the name and occupation of each worker and the actual per diem wages paid to each worker employed on the project. *See id.* § 2258.024(a). Section 2258.024 also provides that this record “shall be open at all reasonable hours to inspection by the officers and agents of the public body.” *Id.* § 2258.024(b); *see also id.* § 2258.058 (criminal penalty for violation of Gov’t Code § 2258.024).

You explain the requested information at issue is not maintained by the district, but instead it is maintained by the contractor pursuant to the contractor’s statutory obligations under chapter 2258 of the Government Code. You further state the information at issue is not kept

by the contractor as an agent of the district. Based on your representation, we find the requested payroll records do not constitute information that is “written, produced, collected, assembled, or maintained . . . by” the district for purposes of section 552.002(a) of the Government Code. Likewise, we find the contractor in this instance does not prepare the requested payroll records as an agent of the district. Instead, the contractor does so in the performance of its own statutory duties under section 2258.024 of the Government Code. Accordingly, we conclude the requested payroll records are not subject to the Act and need not be released to the requestor in response to this ruling.² *See also* Open Records Decision No. 558 (1990) (information subject to chapter 552 of Government Code, even though not in governmental body’s physical custody, where third party prepared information on governmental body’s behalf and makes it available to governmental body).

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/be

Ref: ID# 781113

c: Requestor

2 Third Parties

²As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.