



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 16, 2019

Mr. Frank Stamey  
Assistant District Attorney  
Taylor County  
300 Oak Street, Suite 300  
Abilene, Texas 79602

OR2019-25853

Dear Mr. Stamey:

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# 785967.

Taylor County (the "county") received a request for four categories of information pertaining to specified correspondence sent to the county. You state the county released some of the requested information. You assert the remaining requested information is not subject to the Act. Alternatively, we understand you to assert the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered your arguments.

Initially, we note the request asks the county to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that receives the request. *See* Gov't Code § 552.002; Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Therefore, while the county is not required to create information in response to the questions at issue, documents from which this

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<sup>1</sup>Although you do not raise section 552.101 of the Government Code in your brief, we understand you to assert this exception based on the substance of your argument.

information may be derived would be responsive to this request. You do not inform us whether the county created, produced, collected, assembled, or maintains information responsive to the requested information. To the extent the requested information exists, we address your arguments against its disclosure.

You assert the requested information is not subject to the Act. The Act is applicable only to “public information.” *See id.* §§ 552.002, .021. Section 552.002(a) defines “public information” as the following:

[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 the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). *But see* Open Records Decision No. 635 at 4 (1995) (Gov’t Code § 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). You assert the requested information is not subject to the Act because “the identit[ies] of concerned citizens [are] irrelevant to, and [do] not pertain to, the official business of the [c]ounty.” We find, however, the identity of a private citizen making a complaint to a governmental body about the expenditure of public funds pertains to official government business. Therefore, to the extent it exists, the requested information is responsive to the Act.

Next, to the extent the requested information exists, we must address the county’s obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of

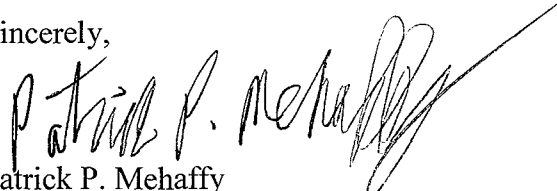
receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The county received the request for information on June 26, 2019. However, as of the date of this letter, you have not submitted a copy or representative sample of the requested information. Accordingly, we conclude the county failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although you raise an exception to disclosure, because you failed to submit the requested information to us for our review, we have no basis to conclude the any of information is excepted from disclosure. Thus, to the extent the requested information exists, we have no choice but to order the county to release the requested information pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/jxd