



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 25, 2019

Ms. Katie Leininger
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581

OR2019-30216

Dear Ms. Leininger:

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# 793664.

The City of Pearland (the "city") received a request for e-mails sent to or from a named individual containing certain keywords. You state the city released some information to the requestor with redactions pursuant to section 552.024 of the Government Code.¹ You claim some information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of submitted information.²

¹ Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

² We 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.

Initially, we note the Act is applicable only to “public information.” *See* Gov’t Code §§ 552.002, .021. Section 552.002 of the Government Code provides in relevant part as follows:

(a) In this chapter, “public information” means 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(a-1). Thus, virtually all the information in a governmental body’s physical possession constitutes public information and, thus, is subject to the Act. *See id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information is “in connection with the transaction of official business” if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See id.* § 552.002(a-1). You state the information in Exhibit C is not public information. Upon review, we find the information in Exhibit C does not constitute public information for purposes of the Act. Gov’t Code § 552.002; *see also* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving no or *de minimis* use of state resources). Therefore, Exhibit C is not subject to the Act, and the city is not required to release it in response to this request.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state Exhibit B pertains to a criminal

investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue. Accordingly, with the exception of basic information, the city may withhold Exhibit B under section 552.108(a)(2) of the Government Code.

In summary, the information in Exhibit C is not subject to the Act and need not be released in response to this request. The city may withhold Exhibit B under section 552.108(a)(2) of the Government Code. 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 <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,



Katie Stallcup
Attorney
Open Records Division

AKS/eb

Ref: ID# 793664

Enc. Submitted documents

c: Requestor
(w/o enclosures)