



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 7, 2019

Ms. Lisa Hulseley
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-31520

Dear Ms. Hulseley:

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# 795686 (C.A. File No. 19PIA0674).

The Office of the Harris County Tax Collector (the "county") received a request for all paper and electronic calendars of a named official and two named employees during a specified time period. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request because it does not consist of records within the specified time period. This ruling does not address the public availability of any information that is not responsive to the request, and the county is not required to release such information in response to this request.¹

¹ As we are able to make this determination, we need not address your arguments against disclosure of this information.

Next, you argue some of the information at issue 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 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 includes personal calendar entries of a county official and county employees that do not relate to the transaction of official county business. 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 county’s business. Based on your representations and our review of the information at issue, we agree some of the information at issue, which we marked, does not constitute public information for the purposes of section 552.002. *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 county is not required to release the information we marked in response to the request for information.² However, upon review, we find the remaining information at issue relates to the transaction of the official business of the

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

county. Thus, we find the remaining responsive information is subject to the Act and the county 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note, however, the public generally has a legitimate interest in information relating to public employment and public employees. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Additionally, information pertaining to leave of public employees is generally a matter of legitimate public interest. *See* Open Records Decision No. 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not private). We further note the scope of a public employee's privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). Upon review, we find you failed to demonstrate any of the information at issue is highly intimate or embarrassing and of no legitimate public interest. Therefore, the county may not withhold any of the remaining responsive information under section 552.101 in conjunction with common-law privacy.

Section 552.152 of the Government Code provides the following:

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.

Gov't Code § 552.152. You seek to withhold the remaining responsive information under section 552.152. Upon review, we find you failed to demonstrate release of any of the information at issue would subject an employee or official of the county to a substantial threat of physical harm. Thus, the county may not withhold any of the remaining responsive information under section 552.152 of the Government Code.

In summary, the county is not required to release the information we marked in response to the request for information. The county must release the remaining 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 <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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 795686

Enc. Submitted documents

c: Requestor
(w/o enclosures)