



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 5, 2019

Mr. S. Anthony Safi  
Counsel for the El Paso Independent School District  
Mounce, Green, Myers, Safi, Paxson & Galatzan P.C.  
P.O. Box 1977  
El Paso, Texas 79999-1977

OR2019-34290

Dear Mr. Safi:

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# 803562 (EPISD ORR Nos. W002187-092619, W002202-100319).

The El Paso Independent School District (the "district"), which you represent, received two requests for all calendar entries pertaining to two named individuals during specified time periods.<sup>1</sup> We understand you will release some information. You state you will continue to rely on Open Records Letter No. 2018-23066 (2018) with respect to some of the requested information.<sup>2</sup> You claim some of the submitted information is not subject to the Act. In the alternative, you claim some of the submitted information is excepted from

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<sup>1</sup> The district sought and received clarification of the information requested in the first request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup> In Open Records Letter No. 2018-23066, this office determined the district, (1) with the exception of the information we have marked for release, is not required to release the information it marked under section 552.002 of the Government Code, and (2) must release the remaining information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

You argue some of the submitted information is not subject to the Act. The Act is applicable only to “public information.” See Gov’t Code §§ 552.002, .021. Section 552.002(a) 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, virtually all of the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You contend the information you marked is not public information as defined by section 552.002. You state the information at issue is purely personal in nature and does not relate to district business. You further state the district allows for incidental use of resources by employees and officials and that the use of district resources to create and maintain the information at issue was *de minimis*. 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). Upon review, we find the information you marked does not constitute “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the district. See Gov’t Code § 552.002. Thus, we find the calendar entries you marked are not subject to the Act and need not be released in response to the present request for information.<sup>4</sup>

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<sup>3</sup> 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 that those records contain substantially different types of information than that submitted to this office.

<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

We note some of the remaining information is subject to section 552.136 of the Government Code.<sup>5</sup> Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the district must withhold the conference call telephone number and access code, which we marked, under section 552.136 of the Government Code.

In summary, the calendar entries you marked are not subject to the Act and need not be released in response to the present request for information. The district must withhold the conference call telephone number and access code, which we marked, under section 552.136 of the Government Code. The district 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,



Kimbell Kesling  
Attorney  
Open Records Division

KK/gw

Ref: ID# 803562

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).