



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2020

Ms. Samantha Courtney
Hood County Sheriff's Office
P. O. Box 879
Granbury, Texas 76048

OR2020-02815

Dear Ms. Courtney:

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# 809914 (Reference #19-01337).

The Hood County Sheriff's Office (the "sheriff's office") received a request for text messages and call logs involving a named official and another individual during a specified time period.¹ You state the sheriff's office does not maintain information responsive to a portion of the request.² You claim the submitted information is not subject to disclosure under the Act. We have considered your argument and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You argue the submitted information 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 As you have not submitted a copy of the request for our review, we take our description of the information requested from your brief.

² The 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).

- (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.

Id. § 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). Furthermore, the Act provides the definition of public information “applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.” *Id.* § 552.002(a-2). 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 submitted information consists of communications between the Hood County sheriff and an individual that relate to re-election campaign matters of the sheriff. Thus, you assert this information does not constitute public information because the nature of these communications does not pertain to the transaction of official business of the sheriff's office. Additionally, you indicate the communications at issue were made through the sheriff's personal phone. *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). Based upon your representations and our review of the information, we agree most of the submitted information 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 sheriff's office. Thus, this information is not subject to the Act and need not be released in response to this request. However, we find the remaining information at issue, which we marked, is maintained in connection with the transaction of official business of the sheriff's office and, thus, is subject to the Act. As you raise no

exceptions to disclosure of this information, the sheriff's office must release the marked 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/jxd

Ref: ID# 809914

Enc. Submitted documents

c: Requestor
(w/o enclosures)