



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2020

Ms. Kimberly Ashby
Public Information Office
County of Blanco
P.O. Box 471
Johnson City, Texas 78636

OR2020-03973

Dear Ms. Ashby:

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# 810759.

The County of Blanco (the "county") received three requests from the same requestor for information pertaining to specified county commissioner court meetings.¹ You state the county has released some of the requested information. You claim some of the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments 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).

Initially, we address the requestor's assertion the county did not comply with the procedural obligations of section 552.301 of the Government Code. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(d) of the Government Code, a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney

¹ The county sought and received clarification of the information requested. *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.3d 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).

general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The requestor asserts he was not timely notified of the request for ruling at issue as required by section 552.301(d) of the Government Code because he received the correspondence at issue after the ten-business-day deadline.

The copy of the first request for information shows it was sent by e-mail and received by the county after business hours on November 5, 2019. Further, you provide documentation showing the county received clarification of first request after business hours on November 15, 2019. Thus, the first request is considered received on November 18, 2019. The copy of the second request for information shows it was sent by e-mail and received by the county on November 12, 2019. Further, you provide documentation showing the county received clarification of the second request on December 4, 2019. Thus, the second request is considered received on December 4, 2019. The copy of the third request for information shows it was sent by e-mail and received by the county on November 19, 2019. Further, you provide documentation showing the county received clarification of the third request on November 26, 2019. Thus, the third request is considered received on November 26, 2019. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. We understand the county was closed on November 28, 2019. Thus, the ten-business-day deadlines to provide information to the requestor pursuant to section 552.301(d) were December 3, 2019, for the first request; December 18, 2019, for the second request; and December 11, 2019, for the third request. *See id.* § 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.3d 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). The envelope in which the county submitted to this office the information required by section 552.301(b) for the first request is postmarked November 19, 2019, for the second request is postmarked December 10, 2019, and for the third request is postmarked December 10, 2019. *See Gov't Code* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Each request for a ruling indicates the requestor was copied on that correspondence. Consequently, we find the requestor has failed to establish the county did not comply with the procedural requirements mandated by section 552.301(d) of the Government Code for any of the three requests.

Next, we address the requestor's assertion the county may possess additional information responsive to the request. We note the Act does not require a governmental body to answer general questions, perform legal research, or 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). 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. Open Records Decision No. 561 at 8-9 (1990). In this instance, the county states the information submitted for our review consists of the information requested. Therefore, we assume county has made a good-faith effort to locate any

information responsive to the request at issue, and we will address the county's argument to withhold the information at issue.

Next, you argue the some of the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

(a) . . . 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). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987). 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* Gov't Code § 552.002(a-1). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

Based on a provision of section 201.003 of the Local Government Code, you contend the handwritten notes are not subject to the Act. Section 201.003 is part of the Local

Government Records Act, subtitle C of title 6 of the Local Government Code. *See* Local Gov't Code § 201.001. Section 201.003(8) provides that the term "local government record" does not include "notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience[.]" *Id.* § 201.003(8)(B). You inform us that the handwritten notes were taken to assist the notetaker throughout the county commissioner's court meeting, keep track of agenda items, and to assist in preparing the formal meeting minutes. You assert that the notes are for "personal reference" and "were not shared with any other party." You contend that pursuant to section 201.003(8)(B) the notes are not "public records" subject to the Public Information Act.

We disagree. "[T]he Act is intended to apply to all records kept by governmental bodies[.]" *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976); *see also* Gov't Code § 552.001(a). The definition of "local government record" found at section 201.003(8) of the Local Government Records Act does not affect the scope of the Act. As this office explained in Attorney General Opinion JM-1250 at 1 (1990), the purpose of the Local Government Records Act is "to establish uniform procedures on the maintenance, preservation, and disposition of local government records and to clarify and expand the authority of the Texas State Library and Archives Commission . . . regarding them." *Id.* at 1; *see also* Open Records Decision No. 607 at 2-3 (1992). Thus, although section 201.009(a) of the Local Government Code provides that "local government records are subject to Chapter 552, Government Code," the fact that information falls *outside* the definition of "local government record" found at section 201.003(8) of the Local Government Code does not preclude a finding that such information still constitutes "public information" for the purposes of the Act. *See* Local Gov't Code §§ 201.002 (stating purpose of Local Government Records Act), 202.002(b) (local government record subject to request under Act may not be destroyed until request is resolved).

The county further argues, because the portions of the submitted information consist of the "[c]ommissioners' notes, taken during the meeting for their own convenience," they are not public records. However, this office has issued numerous rulings concluding information collected, assembled, or maintained in connection with the transaction of official business, including "personal" notes, is subject to the Act. *See, e.g.*, Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are public information), 327 (1982) (notes made by school principal and athletic director relating to teacher "were made in their capacities as supervisors of the employee" and constitute public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam subject to predecessor of Act). Upon review, we find the submitted notes were created by county employees and officials during county meetings and relate to county matters. Thus, the county created and maintained the information in connection with the transaction of its official business.

You also assert the handwritten notes are not public information because they are only copies of official documents which "are provided merely for [the commissioners] convenience and are not always complete copies[.]" We note that information is not excluded from the scope of the Act simply because the information may not be totally accurate. *See* Open Records Decision Nos. 633 at 3 (1995) (information not removed from

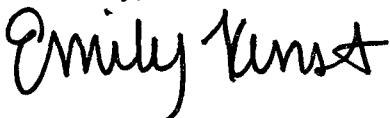
scope of Act merely because governmental body has copied information into another record, either in same language or in compiled, edited, summarized, improved, or otherwise altered form), 225 at 4 (1979) (minutes of meetings are public in whatever form they exist). We also note that a governmental body is not responsible for the accuracy of information that it releases to the public or for the use that may be made of the information. *See* Gov't Code § 552.204; Open Records Decision No. 508 at 3 (1988) (use that may be made of information does not control whether it falls within exception to disclosure). Therefore, having considered your arguments, we find that the submitted information is public information and must be released, unless it contains information that falls within an exception to disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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.*, 540 S.W.2d at 685. 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. However, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern, and the county may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy. As you raise no further exceptions to disclosure, the county must release the submitted 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,



Emily Kunst
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)