



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2020

Mr. Tommy L. Coleman
Assistant District Attorney
Polk County
101 West Mill Street, Suite 247
Livingston, Texas 77351

OR2020-05595

Dear Mr. Coleman:

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# 813183.

The Polk County District Attorney's Office (the "district attorney's office") received a request for certain communications involving a named official.¹ You claim the submitted information is not subject to disclosure under the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

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) by a governmental body; or
- (2) for a governmental body and the governmental body:
 - (A) owns the information;

¹ As you have not submitted a copy of the written request for information, we take our description of the request from your brief.

(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 submitted information consists of communications between the Polk County district attorney and private individuals that relate exclusively to personal matters between the respective parties. 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 district attorney's office. Additionally, you inform us the communications at issue were generated through the private e-mail account of the district attorney. *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 at issue, we agree the submitted information does not constitute public information for the purposes of section 552.002. *See id.* Accordingly, we find the submitted information is not subject to the Act, and the district attorney's office need not release it in response to the present request for information.²

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

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

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,

A handwritten signature in black ink, appearing to read 'KH', with a horizontal line extending to the right.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 813183

Enc. Submitted documents

c: Requestor
(w/o enclosures)