



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2020

Ms. Sandra Passailaigue
City Secretary
City of Leon Valley
6400 El Verde Road
Leon Valley, Texas 78238-2399

OR2020-22651

Dear Ms. Passailaigue:

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# 841778 (COLV ORR# 041320-A).

The City of Leon Valley (the "city") received a request for a copy of a prior request the city received, the cost estimates or invoices related to the prior request, and all information that was released in response to the prior request. The city states it has released some information to the requestor. The city claims the submitted information is not subject to the Act. Further, the city claims some of the submitted information is excepted from disclosure under sections 552.107, 552.117, and 552.137 of the Government Code.¹ We have considered the exceptions the city claims and reviewed the submitted information. We 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, the city indicates some of the submitted information is supporting documentation and is not responsive to the instant request. This ruling does not address the public availability of the non-responsive information, which we have marked, and the city need not release it in response to the request.

¹ Although the city also raises sections 552.101, 552.108, and 552.111 of the Government Code, it makes no arguments to support these exceptions. Therefore, we assume the city has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302. Additionally, while we note the city does not cite to section 552.117 or section 552.137 of the Government Code in its brief, we understand the city to raise these sections based on the substance of its arguments.

The Act is applicable only to “public information.” *See id.* §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, “public information” means 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(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information 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 governmental 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, 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, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Further, information that is written, produced, collected, assembled, or maintained by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity may be subject to disclosure under the Act if the information pertains to official business of the governmental body. Gov’t Code § 552.002(a)(3). 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 id.* § 552.002(a-1). Moreover, section 552.001 of the Act

provides 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).

We further note the characterization of information as “public information” under the Act is not dependent on whether the requested records are in the possession of an individual or whether a governmental body has a particular policy or procedure that establishes a governmental body’s access to the information. *See* Open Records Decision No. 635 at 3-4 (1995) (information does not fall outside definition of “public information” in Act merely because individual member of governmental body possesses information rather than governmental body as whole); *see also* Open Records Decision No. 425 (1985) (information sent to individual school trustees’ homes was public information because it related to official business of governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)). Thus, if the information at issue is related to the city’s business, the mere fact it is not in the city’s possession does not remove the information from the scope of the Act. *See* ORD 635 at 6-8 (information maintained on a privately-owned medium and actually used in connection with the transaction of official business would be subject to the Act).

The city asserts the submitted information is not public information. However, based upon our review, we find the city maintains the submitted information in connection with the transaction of its official business. Thus, the information constitutes “public information” as defined by section 552.002(a). Accordingly, the submitted information is subject to the Act in its entirety and the city must release it, unless it falls within an exception to public disclosure under the Act. *See* Gov’t Code §§ 552.006, .021, .301, .302.

Next, we note some of the information the requestor seeks are documents that were previously released in response to a prior request under the Act. The Act does not permit the selective disclosure of information to the public. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov’t Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). The city claims section 552.107 of the Government Code for some of the previously-released information. However, section 552.107 is discretionary in nature and does not expressly prohibit the release of information or make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov’t Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the city may not withhold the previously-released information under section 552.107 of the Government Code. Nevertheless, as sections 552.117, 552.1175, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the submitted information.²

² 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).

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). However, the city informs us, and the submitted documentation reflects, the information at issue pertains to volunteers of the city. We note section 552.117 does not protect from disclosure information that concerns an individual who is a volunteer for the city and is not a current or former city official or employee. Therefore, the city may not withhold any of the submitted information under section 552.117 of the Government Code. *See Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).*

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Gov't Code* § 552.1175. Section 552.1175 applies, in part, to “a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001.” *Id.* § 552.1175(a)(15). We note section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 is not applicable to cellular telephone numbers paid for by governmental body and intended for official use).* Accordingly, to the extent the information we have marked relates to an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold this information under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual whose information is at issue is not subject to section 552.1175(a) or does not elect to restrict access to his information in accordance with section 552.1175(b), then this information may not be withheld under section 552.1175 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, the general e-mail address of a business, an Internet website address, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address that a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Some of the e-mail addresses at issue are not excluded by subsection (c). *See Austin Bulldog v. Leffingwell,*

490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of Gov’t Code § 552.137(a)). Therefore, the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. However, upon review, we find the e-mail addresses in the remaining information are specifically excluded by section 552.137(c), and the city may not withhold any of the remaining information on that basis.

In summary, to the extent the information we have marked relates to an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold this information under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 841778

Enc. Submitted documents

c: Requestor
(w/o enclosures)