



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 7, 2022

Mr. William W. Webster  
Senior Associate General Counsel  
Texas Tech University System  
MSC 11006  
4801 Alberta Avenue  
El Paso, Texas 79905

OR2022-03261

Dear Mr. Webster:

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# 924653.

Texas Tech University (the "university") received a request for certain e-mails that include two specified key-phrases on a stated date. Although the university takes no position regarding whether the submitted information is excepted from disclosure under the Act, the university informs us its release may implicate the proprietary interests of The Big 12 Conference, Inc. (the "Big 12"). Accordingly, the university states, and provides documentation showing, it notified the Big 12 of the request for information and of its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the Big 12. We have considered the submitted arguments and reviewed the submitted information.

The Big 12 argues the submitted information is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code 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.

Gov't Code § 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 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). The Big 12 contends the information at issue is not subject to the Act because the information was sent and received by the university's president in his capacity as a member of the Big 12's board of directors, and not in his official capacity as an employee of the university. Thus, the Big 12 asserts the information at issue was not written, produced, collected, assembled, or maintained in connection with the transaction of any official business of the university. Having considered the submitted arguments and reviewed the information at issue, we find the information at issue was not "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the university. Gov't Code § 552.002; 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). We therefore conclude the submitted information is not subject to the Act and the university is not required to release this information in response to the instant request for information.<sup>1</sup>

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/eb

Ref: ID# 924653

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: Third Party  
(w/o enclosures)