



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2022

Mr. Ronny H. Wall
Senior Associate General Counsel
Texas Tech University System
P.O. Box 42021
Lubbock, Texas 79409-2021

OR2022-08212

Dear Mr. Wall:

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# 934727.

The Texas Tech University System (the "system") received a request for a named official's telephone records from any telephone used to conduct system business from a stated time period.¹ You state the system will withhold access device numbers pursuant to section 552.136 of the Government Code.² You claim some of the submitted information does not consist of public information subject to the Act. You also claim some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.³

¹ You state the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

³ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

Initially, although you assert some of the submitted information is not responsive to the present request for information because portions do not relate to official system business, you also inform us some of the information is related to official system business. Upon review, we find the entirety of the telephone records you submitted is responsive to the request. Accordingly, we will consider your remaining arguments against disclosure of the submitted information.

Next, you argue some of the submitted information, which you have indicated, is not subject to the Act. The Act is applicable only to “public information.” *See* Gov’t Code §§ 552.002, .021. Section 552.002(a) defines “public information” as the following:

[I]nformation 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). Thus, virtually all the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). *But 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). The Act can also encompass 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 the officer or employee’s 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); *cf.* Open Records Decision No. 499 (1988). Information is “in connection with the transaction of official business” if it is “created by, transmitted to,

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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." Gov't Code § 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).

The system asserts some of the responsive information consists of personal telephone records that are not connected to the transaction of official business of the system. We reiterate that information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. *See id.* § 552.002(a). Accordingly, to the extent the responsive information does not relate to the named individual acting in his official capacity or the information does not pertain to system business, it is not subject to the Act and the system is not required to release it.⁴ However, to the extent the information at issue relates to the named individual acting in his official capacity and the information pertains to system business, it is subject to the Act and must be released unless an exception to disclosure applies to the information. *See id.* §§ 552.301(a), .302. In this event, we will consider the raised exception.

Section 552.117(a)(1) of the Government Code exempts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The system informs us the information at issue consists of the home telephone numbers and personal cellular telephone numbers of system employees or officials who elected to keep this information confidential prior to the system's receipt of the instant request. The system further informs us a governmental body does not pay for the cellular services at issue. Therefore, the system must withhold the telephone numbers you marked under section 552.117(a)(1) of the Government Code.

⁴ In this instance, as we are able to make this determination, we need not address the remaining argument against disclosure of this information.

In summary, to the extent the submitted information does not relate to the named individual acting in his official capacity or the information does not pertain to system business, it is not subject to the Act and the system is not required to release it. The system must withhold the telephone numbers you marked under section 552.117(a)(1) of the Government Code. The system 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 934727

c: Requestor