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ATTORNEY GENERAL OF TEXAS

March 31, 2022

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

OR2022-09487

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# 937280.

Texas Tech University System ("TTUS") received a request for telephone records of a named member of the TTUS board of regents.¹ TTUS states it will withhold information pursuant to section 552.136(c) of the Government Code.² TTUS claims some of the submitted information is either not subject to the Act or excepted from disclosure under section 552.117 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

¹ After receiving the request, TTUS sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). TTUS states it received the deposit on January 18, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

² Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *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).

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, 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).

TTUS asserts some of the submitted information consists of personal telephone records that are not connected to the transaction of official business of TTUS. 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 submitted information does not relate to the named individual acting in his official capacity or the information does not pertain to TTUS business, it is not subject to the Act and TTUS is not required to release it. However, to the extent the information at issue relates to the named individual acting in his official capacity and the information pertains to TTUS 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 excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or 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 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, TTUS must withhold the cellular telephone numbers it has marked under section 552.117(a)(1) if the employees or officials at issue made timely elections to keep the information confidential and the cellular telephone service was not provided to them at issue at public expense. However, TTUS may not withhold this information if either the employees or officials did not make timely elections to keep the information confidential or the cellular telephone service was not provided to them at public expense.

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 TTUS business, it is not subject to the Act and TTUS is not required to release it. TTUS must withhold the cellular telephone numbers it has marked under section 552.117(a)(1) if the employees or officials at issue made timely elections to keep the information confidential and the cellular telephone service was not provided to them at issue at public expense. TTUS 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 937280

c: Requestor