



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2022

Mr. Omar Villa
Assistant County Attorney
University Medical Center of El Paso
4815 Alameda Avenue, 8th Floor, Suite B
El Paso, Texas 79905

OR2022-09564

Dear Mr. Villa:

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# 936769 (Ref. No. HM-22-013).

The El Paso County Hospital District d/b/a University Medical Center of El Paso ("UMC") received a request for thirteen categories of information including certain communications, employment agreements, schedules, statements, gifts, expenses, and reimbursements. You state UMC released information responsive to category one of the requested information. You claim the submitted information is not public information subject to the Act. We have considered your argument and reviewed the submitted representative sample of information.¹ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, you state UMC sought clarification from the requestor for categories two through eight and category ten of the request for information. *See* Gov't Code § 552.222 (providing that 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

¹ 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 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.

unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state UMC has not received a response from the requestor for these portions of the request. Thus, for the portions of the request for which you have sought but not received clarification, we find UMC is not required to release information in response to these portions of the request. However, if the requestor clarifies these portions of the request for information, UMC must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

You argue the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

(a) . . . 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;

(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 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. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her 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). 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* Gov't Code § 552.002(a-1). Moreover, section 552.001 of the Act provides that 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* Gov't Code § 552.001(a).

You argue the submitted information consists of communications of a personal nature. 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 UMC. We understand UMC allows for incidental use of resources by employees and officials and that the use of UMC's resources to create and maintain the information at issue was *de minimis*. *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). 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 UMC need not release it in response to the present request for information. Accordingly, because UMC does not seek to withhold information that is subject to the Act, this situation falls outside of the Act and beyond the scope of this office's authority to render a decision, and we consider this matter closed. If UMC has any questions with regard to this letter, please refer to ID# 936769.

Sincerely,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jm

Ref: ID# 936769

c: Requestor