



April 10, 2001

Ms. Bonnie Lee Goldstein  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.  
3000 Bank One Center  
1717 Main Street  
Dallas, Texas 76201-4336

OR2001-1434

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145811.

The City of Highland Village (the "city"), which you represent, received a request for "2 e-mails received by councilmember Baird from 2 newspaper people voicing concerns of conflict between public official and information on his website." You claim that the requested information is not public information subject to disclosure under the Public Information Act (the "act") and further, that the city does not have a right of access to the information. We have considered your arguments and reviewed the submitted information.

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information as "information that is 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 owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988). Information is generally "public information" within the act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties, even though it may be in the

possession of one person. Open Records Decision No. 635 at 4 (1995). In Open Records Decision No. 635, this office stated:

[i]nformation does not fall outside of the act simply because an individual commissioner, rather than the commission as a whole, possesses it. Records that clearly relate to official business are public records subject to the act regardless of whether an individual member of a governmental body, the governmental body's administrative offices, or the custodian of records holds the records. Open Records Decision No. 425 (1985) at 2 (overruled on other grounds by Open Records Decision No. 439 (1986)). If a governmental body could withhold records relating to official business simply because they are held by an individual member of the governmental body, it could easily and with impunity circumvent the act merely by placing all records relating to official business in the custody of an individual member. The legislature could not have intended to permit governmental bodies to escape the requirements of the act so easily. *Id.*

ORD 635 at 3 (1995). Although not an exhaustive list, the following factors are relevant to determining whether documents are essentially personal in nature or whether they contain information that is collected, assembled or maintained by or for a governmental body: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the employer required its preparation; and whether its existence was necessary to or in furtherance of the employer's business. *Id.* at 5 (citing *In re Grand Jury Proceedings*, 55 F.3d 1012, 1014 (5th Cir. 1995)). Further, if information maintained on a privately owned medium was actually used in connection with the transaction of official business, then the information would be subject to the act. ORD 635 at 7.

In this case, you have submitted an e-mail sent by a representative of the news media to a city council member at an address tied to the council member's privately owned website. You provide the following facts with regard to this information:

(1) this document was not generated within or by the City; (2) this document is not and never has been in possession of the City; (3) this document has never been placed in City files; (4) this document was not created by City employees for or on behalf of City Council person Baird; (5) no City equipment was utilized in generating this document; (6) this document has not been used in the conduct of City business; (7) this document was received by Council person Baird on his personal web-site; (8) no public funds were expended in generating this document; (9) no City ordinance or other applicable authority mandated or otherwise required the creation of this document; and (10) this document is not necessary or in furtherance of City business.

After review of the submitted information, your arguments, and the factors set forth in Open Records Decision No. 635, we conclude that the information at issue was not used by the council member in the transaction of official city business, and thus, it is not public information under section 552.002. Therefore, the city need not release the requested information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 145811

Encl. Submitted documents

cc: Ms. Barb Ross  
327 Scenic Drive  
Lewisville, Texas 75077  
(w/o enclosures)