



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2011

Ms. Jacqueline Cullom
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2011-05019

Dear Ms. Cullom:

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# 414092.

The City of Austin (the "city") received two requests from the same requestor for (1) records of meetings where the mayor, any council members, or the city manager were present from January 1, 2010 to the date of the request; (2) communications to or from the mayor, the city manager, or any council member from January 1, 2010 to the date of the request; (3) specified certificates; and (4) records reflecting discussions regarding the city joining a specified lawsuit. You state the city does not possess information responsive to item four of the request.¹ You also state the city has released some information to the requestor. You claim a portion of the submitted information is not subject to the Act. Although you state the city takes no position with respect to the public availability of the remaining submitted information, you state its release may implicate the proprietary interests of Waller Creek Conservancy ("Waller Creek"). Accordingly, you notified Waller Creek of the request and of its right to submit arguments to this office as to why information pertaining to it should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). You have provided this office with documentation from an attorney for Waller Creek stating Waller Creek does not object to the release of any of the

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

information at issue. We have considered your arguments and reviewed the submitted representative sample of information.²

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). Open Records Decision No. 684 (2009) authorizes the withholding of ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. However, you do not assert, nor does our review indicate, that you have been otherwise authorized to withhold the work addresses and telephone numbers of private individuals you have redacted without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the city should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See Gov't Code.* §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302. Because no exceptions against disclosure of the redacted work addresses and telephone numbers information are raised, they must be released.

You contend some of the submitted information is not public information subject to the Act. The Act applies to "public information," which is defined under section 552.002 of the Government Code 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.

Id. § 552.002; *see also id.* § 552.021. Information is generally subject to the Act when it is held by a governmental body and 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. Thus, virtually all of the information in a governmental body's physical possession constitutes

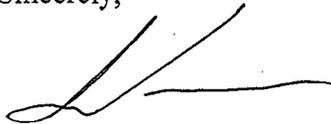
²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

public information and thus is subject to the Act. *Id.* § 552.002(a)(1). You assert the information of you have marked consists of e-mail communications of city council members that are clearly personal in nature, have no connection with city business, and represent incidental use of city e-mail by the council members. Thus, you argue that these e-mails do not relate to the official business of the city and were not collected, assembled, or maintained by the city pursuant to law or in connection with the transaction of official business. *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business). However, we note one of the e-mails at issue pertains to council members' itinerary during a fact-finding trip, which relates to official city business. Accordingly, this e-mail, which we have marked, is subject to the Act and must be released unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002, .006, .021. As no exceptions to disclosure of this e-mail are raised, it must be released. The remaining information at issue does not constitute public information as defined by section 552.002 and the city is not required to release this information under the Act.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 414092

Enc. Submitted documents

c: Requestor
(w/o enclosures)