



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2011

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

OR2011-05507

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# 415156.

The City of Austin (the "city") received a request for electronic communications between and among the mayor, council members, and city manager during a specified period of time. You state you are releasing some of the requested information. You claim that the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted representative sample of information.¹

You claim that the submitted e-mails are not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹We 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.

(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(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). You claim that the submitted e-mails are not subject to the Act because they do not reference city business. Upon review of your arguments and the information at issue, we agree that the e-mails we have marked do not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the city. *See* Gov't Code § 552.021; *see also* 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). However, we find the remaining e-mails at issue consist of communications sent to or from the city council members in their capacity as city officials. Therefore, we conclude these e-mails were collected or assembled or are maintained in connection with the transaction of official city business and, thus, constitute "public information" as defined by section 552.002(a). Accordingly, we will consider whether any of the remaining e-mails are excepted under the Act.

We note that the remaining information contains personal e-mail addresses that are subject to section 552.137 of the Government Code.² Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.³

In summary, the e-mails we have marked are not subject to the Act, and the city need not release them in response to this request. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold 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.

addresses have affirmatively consented to their disclosure. The remaining information must be released.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tf

Ref: ID# 415156

Enc. Submitted documents

c: Requestor
(w/o enclosures)