



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 6, 2011

Ms. Caroline Rush  
Public Informer Officer  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2011-12816

Dear Ms. Rush:

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# 429119 (COSA File No. W001795-062011, W001796-062011, W001797-062011, W001798-062011).

The City of San Antonio (the "city") received four requests from the same requestor for text messages sent or received by four named employees over a specified time period. You state the city does not have information pertaining to three of the named employees.<sup>1</sup> You state the city will release some of the requested information to the requestor upon her response to a cost estimate. You claim the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted information.

The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act 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: (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).

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

You inform us the submitted information consists of personal text messages that have no connection with city business and represent *de minimus* use of city resources by a city employee. After reviewing the information at issue, we agree that the submitted information does 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 id.* § 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). Therefore, the submitted information is not subject to the Act, and the city need not release it in response to this request.

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 429119

Enc. Submitted documents

c: Requestor  
(w/o enclosures)