



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2011-17566

Dear Mr. Walker:

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# 437270.

The Montgomery County Sheriff's Office (the "sheriff") received a request for several categories of information pertaining to a named individual, including "personal" e-mails between the named individual and other sheriff employees.¹ You state you are releasing some of the requested information. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it does not consist of communications between the named individual and other sheriff employees. This ruling does not address the public availability of non-responsive information, and the sheriff need not release such information in response to this request.

You argue the responsive information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as:

¹You indicate the sheriff sought and received clarification from the requestor that he does not seek work-related e-mails. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used)

[I]nformation 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). 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 state the information at issue consists of personal e-mails of the named individual. You further state these e-mails are strictly personal, represent permitted incidental use of the sheriff's e-mail system, and contain no information related to sheriff business. Based on your representations and our review, we agree the e-mails at issue do not constitute public information for the purposes of section 552.002. *See* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). As such, the responsive information is not subject to the Act, and the sheriff need not release it in response to this request.²

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 437270

Enc. Submitted documents

cc: Requestor
(w/o enclosures)