ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2012

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

OR2012-05410

Dear Mr. Phillips:

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# 450756.

The Montgomery County Attorney's Office (the "county attorney's office"), received a request for the total amount of funds expended during a specified time period by the county attorney's office to retain outside counsel and all e-mails sent by a named individual during a specified time period, excluding attorney-client privileged information.[1] You state you have released most of the requested information to the requestor. You claim that the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your contention the submitted e-mails are not subject to the Act. The Act applies to "public information," which is defined in 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

[1]You inform us, and the submitted information reflects, the county attorney's office sought and received clarification of the request for information. *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).

access to it." Gov't Code § 552.002. 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). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

You state the submitted e-mails are "personal communications between friends and colleagues and do not relate to the business of the county." Based on your representations and our review, we agree most of 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 county attorney's office. *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). Therefore, the submitted e-mails are generally not subject to the Act and need not be released in response to this request.[2] However, upon review, we find the e-mails we have indicated were collected or assembled or are maintained in connection with the transaction of official county attorney's office business; thus, these e-mails constitute "public information" as defined by section 552.002(a). Accordingly, the e-mails we have indicated are subject to the Act and must be released, unless they fall within an exception to public disclosure under the Act. *See* Gov't Code § 552.305(b).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You assert the information at issue is confidential under common-law privacy. However, upon review, we find this information is not highly intimate or embarrassing and of no legitimate public interest. Therefore, none of the information at issue is confidential under common-law privacy, and the county attorney's office may not withhold it under section 552.101 on that ground.

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[2]As we are able to make this determination, we need not address your argument against disclosure of this information.

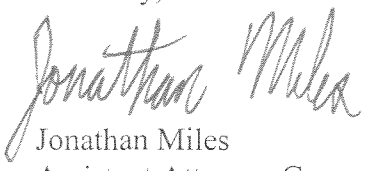
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).[3] *See* Gov't Code § 552.137(a)-(c). Upon review, we have indicated an e-mail address that does not appear to be of a type specifically excluded by section 552.137(c). Accordingly, the county attorney's office must withhold the e-mail address we have indicated under section 552.137, unless the owner affirmatively consents to its public disclosure.[4]

In summary, with the exception of the e-mails we have indicated, the submitted e-mails are not subject to the Act and need not be released. The county attorney's office must withhold the e-mail address we have indicated under section 552.137 of the Government Code, unless the owner affirmatively consents to its public 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

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

[4]We note Open Records Decision No. 684 (2009) is 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.

Ref: ID# 450756

Enc. Submitted documents

c: Requestor
(w/o enclosures)