



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2012

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

OR2012-11682

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# 460192.

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for all e-mail correspondence to or from five named individuals on their work e-mail addresses during specified time periods. 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 sections 552.101 and 552.107 of the Government Code. We have considered the submitted 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 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 [sheriff’s office].” 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 sheriff’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.<sup>1</sup> However, upon review, we find the e-mail we have marked was collected or assembled or is maintained in connection with the transaction of official sheriff’s office business; thus, this e-mail constitutes “public information” as defined by section 552.002(a). Accordingly, the e-mail we have marked is subject to the Act and must be released, unless it falls within an exception to public disclosure under the Act. *See* Gov’t Code § 552.305(b). Accordingly, we will address your argument against disclosure under the Act for the information at issue.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *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, the information at issue is not confidential under common-law privacy, and the sheriff’s office may not withhold it under section 552.101 on that ground.

In summary, with the exception of the e-mail we have marked, the submitted e-mails are not subject to the Act and need not be released. The remaining information must be released.

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<sup>1</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

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,

A handwritten signature in black ink that reads "Cynthia G. Tynan". The signature is written in a cursive, slightly slanted style.

Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/ag

Ref: ID# 460192

Enc. Submitted documents

c: Requestor  
(w/o enclosures)