



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2012

Ms. Julia Gannaway
Counsel for the City of Alice
Lynn, Ross, Smith & Gannaway, L.L.P.
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2012-13234

Dear Ms. Gannaway:

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# 462765.

The City of Alice (the "city"), which you represent, received a request for two categories of specified e-mails, text messages, or other written communications from a specified time period. You claim the submitted information is not subject to the Act. You also claim this information is excepted from disclosure under sections 552.107 and 552.109 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note you have submitted only text messages. To the extent the city maintains additional information responsive to the request for information that existed on the date the request was received, we assume the city has released it. If the city has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We next note some of the submitted information, which we have marked, is not responsive to the request because it was created after the date the request was received. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present request.

You claim 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) of the Government Code defines “public information” 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.

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). 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 inform us that the responsive information consists of text messages that were transmitted on the personal cellular telephones of the individuals at issue. You state the city does not reimburse these individuals for the costs associated with their cellular telephones. You inform us that the text messages at issue are personal communications and were not collected, assembled, or maintained in connection with the transaction of the city’s official business. Based on your representations and our review, we agree the responsive 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 Gov’t Code § 552.021; see also Open Records Decision No. 635 (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, this information is not subject to the Act and the city need not release it in response to this request.¹

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

¹As our ruling is dispositive, we need not address your remaining arguments.

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, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 462765

Enc. Submitted documents

c: Requestor
(w/o enclosures)