



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2012

Ms. Nancy Nelson  
Associate Vice President  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500

OR2012-13316

Dear Ms. Nelson:

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# 462675 (ORR 11-31).

The El Paso Community College District (the "district") received a request for payroll records from Tomca Contractors and PA Contractors for 2011 and 2012 in relation to a specified project.<sup>1</sup> You claim the requested information is not public information that is subject to the Act. Additionally, we understand you believe release of the requested information may implicate the proprietary interests of Tomca Contractors and PA Contractors. Accordingly, we understand you notified Tomca Contractors and PA Contractors of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

---

<sup>1</sup>You inform us the district sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if 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); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

of exception to disclosure under the Act in certain circumstances). We have considered your argument.

We note the Act applies only to public information. *See* Gov't Code §§ 552.021, .221. Section 552.002(a) of the Act defines "public information" as information "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, information requested of a governmental body is subject to the Act even if the governmental body does not physically possess the information, if the information is collected, assembled, or maintained for a governmental body and the governmental body owns the information or has a right of access to the information.

You indicate the requestor seeks information regarding payroll records of contractors that are engaged in work on a public works project. Chapter 2258 of the Government Code is applicable to prevailing wage rates for public works projects. Section 2258.021(a) provides that workers, laborers, or mechanics employed by or on behalf of the state or a political subdivision of the state shall be paid "not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed[.]" *Id.* § 2258.021(a). Section 2258.024 requires the contractor and each subcontractor to keep a record of the name and occupation of each worker and the actual per diem wages paid to each worker employed on the project. *See id.* § 2258.024(a). Section 2258.024 also provides that this record "shall be open at all reasonable hours to inspection by the officers and agents of the public body." *Id.* § 2258.024(b); *see also id.* § 2258.058 (criminal penalty for violation of Gov't Code § 2258.024).

You explain the requested information is not maintained by the district, but instead pursuant to the contractors' statutory obligations under chapter 2258 of the Government Code. You indicate the requested information is not kept by the contractors as agents of the district. Based on your representation, we find the requested payroll records do not constitute information that is "collected, assembled, or maintained . . . by" the district for purposes of section 552.002(a)(1) of the Government Code. Likewise, we find the contractors in this instance do not prepare the requested payroll records as agents of the district. Instead, the contractors do so in the performance of their own statutory duties under section 2258.024 of the Government Code. Accordingly, we conclude the requested payroll records are not subject to the Act and need not be released to the requestor in response to this ruling. *See also* Open Records Decision No. 558 (1990) (information subject to chapter 552 of Government Code, even though not in governmental body's physical custody, where third party prepared information on governmental body's behalf and makes it available to governmental body).

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 462675

c: Requestor

Tomca Contractors  
C/O Nancy Nelson  
Associate Vice President  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500

PA Contractors  
C/O Nancy Nelson  
Associate Vice President  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500