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ATTORNEY GENERAL OF TEXAS

July 29, 2016

Mr. Jay Youngblood
Counsel for Daingerfield-Lone Star Independent School District
Powell & Leon, LLP
1001 ESE Loop 323, Suite 450
Tyler, Texas 75701

OR2016-17141

Dear Mr. Youngblood:

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# 620467.

The Daingerfield-Lone Star Independent School District (the "district"), which you represent, received a request for vote information pertaining to a specified election, telephone records from the administration building during a specified time, and telephone records of the superintendent's personal cellular telephone during a specified period of time. You claim the submitted information is not subject to the Act. In the alternative, you claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert the submitted information does not consist of public information that is subject to disclosure under the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). 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). Further, information that is written, produced, collected, assembled, or maintained by an individual officer or employee of a governmental body in the officer's or employee's official capacity may be subject to disclosure under the Act if the information pertains to official business of the governmental body. Gov't Code § 552.002(a)(3). Information is "in connection with the transaction of official business" if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

We further note that the characterization of information as "public information" under the Act is not dependent on whether the requested records are in the possession of an individual

or whether a governmental body has a particular policy or procedure that establishes a governmental body's access to the information. *See* Open Records Decision No. 635 at 3-4 (1995) (finding that information does not fall outside definition of "public information" in Act merely because individual member of governmental body possesses information rather than governmental body as whole); *see also* Open Records Decision No. 425 (1985) (concluding, among other things, that information sent to individual school trustees' homes was public information because it related to official business of governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)). Thus, if the information at issue is related to the district's business, the mere fact it is not in the district's possession does not remove the information from the scope of the Act. *See* ORD 635 at 6-8 (stating that information maintained on a privately-owned medium and actually used in connection with the transaction of official business would be subject to the Act).

You argue the submitted bills pertaining to the superintendent's cellular telephone are outside the scope of the Act. You state the district does not provide the superintendent with a cellular telephone, but rather she utilizes a personal cellular telephone. You further state public funds are not used to pay for the superintendent's personal cellular telephone service. Based on your representations and our review of the information at issue, we find most of the information at issue does not constitute public information for purposes of section 552.002 of the Government Code. *See id.* at 4. Therefore, this information is not subject to the Act, and the district need not release it in response to this request.¹ However, you acknowledge the superintendent occasionally uses her personal cellular telephone while performing her job duties. We reiterate that information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. *See* Gov't Code § 552.002(a). Thus, to the extent the information we have indicated relates to the official business of the district, it is subject to the Act, must be released unless an exception to disclosure applies to the information. *See id.* §§ 552.301 (a), .302.

Next, we note the district has submitted responsive superintendent's cellular telephone records, but not any information responsive to the other requested categories of information. Although the district states the submitted information is a representative sample of the requested information, we find the submitted information is not representative of the other types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the type of information the district has submitted for our review. This ruling does not authorize the district to withhold any information that is substantially different from the type of information it submitted to this office. *See id.* § 552.302. Accordingly, to the extent any information responsive to the remainder of the request for information existed in the possession of the district when it received the request, we assume the district has released this information to the requestor. *See* Open Records

¹As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

In summary, to the extent the information we have indicated relates to the official business of the district, it is subject to the Act, and must be released. The remaining submitted information is not subject to the Act and need not 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 620467

Enc. Submitted documents

c: Requestor
(w/o enclosures)