



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2016

Ms. L. Carolyn Nivens
Paralegal
Counsel for City of Seabrook
Ross, Banks, May, Cron & Cavin, P.C.
7700 San Felipe, Suite 550
Houston, Texas 77063-1618

OR2016-23161

Dear Ms. Nivens:

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# 630465 (ORR# 3957-1).

The City of Seabrook (the "city"), which you represent, received a request for all comments made on social media pages of the city's police department (the "department") on a specified date. You argue the requested information does not consist of public information subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, you argue the requested information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002(a) of the Government Code as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹Although you also raise section 552.101 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

- (1) by a governmental body; or
- (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.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See id.*; Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act can also encompass information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in the officer or employee's official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Information is "in connection with the transaction of official business" if it 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 government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides 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).

The submitted information consists of postings to the department's Facebook page. You contend the requested information is not subject to the Act because the information is "controlled by the owner of the Facebook application." Thus, you assert the department's Facebook page does not have the same status for purposes of the Act as the city's website, whose content you acknowledge falls within the scope of the definition of public information under section 552.002. However, we note you have submitted a copy of the Facebook Terms of Service Agreement (the "agreement"), to which you state the city is subject. We note section two of the agreement, "Sharing Your Content and Information," states "You own all of the content and information you post on Facebook, and you can control how it is shared

through your privacy and application settings.” We further note you have submitted a copy of the city’s “Guidelines, Best Practices and Policy for Social Media Use for the City of Seabrook, Tx” (the “policy”). In section two of the policy, it states “Social media offers [city] employees the opportunity to interact with the public in new, exciting ways that facilitate transparency, interactivity, and collaboration[.] The [city] encourages the use of social media to advance the goals of the city and the missions of its departments, where appropriate.” Finally, we note you have submitted documentation reflecting that comments made on the department’s Facebook page are moderated by the city’s Director of Communications, as appointed by the city manager, and that all posts and comment moderation are reviewed by and approved by the city manager in accordance with the policy. Accordingly, we find the submitted information was collected, assembled, or maintained in connection with the transaction of the city’s official business. Therefore, we conclude the submitted information is subject to the Act and the city must release it unless the city demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302. Accordingly, we will consider the city’s claimed exception to disclosure of the submitted information.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(15) information regarded as open to the public under an agency’s policies[.]

Id. § 552.022(a)(15). As noted, the submitted information consists of postings to the city’s Facebook page, which is maintained as open to the public pursuant to the policy. Thus, we find the submitted information is subject to section 552.022(a)(15). The city must release the submitted information pursuant to section 552.022(a)(15) unless it is made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold the submitted information under section 552.103 of the Government Code. Thus, the city must release the submitted information pursuant to section 552.022(a)(15) of the Government Code.

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,

A handwritten signature in black ink that reads "Ramsey Abarca". The signature is written in a cursive, flowing style.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 630465

Enc. Submitted documents

c: Requestor
(w/o enclosures)