



August 29, 2001

Mr. Matthew C.G. Boyle
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2001-3828

Dear Mr. Boyle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151338.

The City of Bedford (the "city"), which you represent, received a request for all messages, notes and other correspondence sent by electronic mail to and from Mayor John Murphy to and from all city employees on June 4, 2001 and June 5, 2001. You state that it is the city's position that the responsive information is not subject to disclosure under the Public Information Act (the "Act") as it does not fall within the Act's definition of "public information." In the alternative, you claim that the responsive information is excepted from disclosure under sections 552.101 and 552.109 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 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." Gov't Code § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988). Information is generally "public information" within the Act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties, even though it may be in the possession of one person. Open Records Decision No. 635 at 4 (1995). Although not an exhaustive list, the following factors are relevant to determining whether documents are essentially personal in nature or whether they contain information that is collected, assembled, or maintained by or for a governmental body: who prepared the

document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the employer required its preparation; and whether its existence was necessary to or in furtherance of the employer's business. *Id.* at 5 (citing *In re Grand Jury Proceedings*, 55 F.3d 1012, 1014 (5th Cir. 1995)).

In this case, you state that the only document responsive to the request is an e-mail sent by Mayor Murphy to city staff employees. You also state that the e-mail was created for personal use of the sender and recipients, and that it was neither created nor maintained under a law or ordinance or connected to official business of any kind. After review of the submitted information, your arguments, and the factors set forth in Open Records Decision No. 635, we conclude that the information at issue was not used in the transaction of official business, and thus, it is not public information under section 552.002 of the Government Code. Therefore, the city need not release the requested information.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹Because the information at issue is not "public information" subject to the Act, we need not address your other claimed exceptions to disclosure at this time.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref.: ID# 151338

Enc.: Submitted documents

c: Ms. Jennifer Packer, Reporter
The Dallas Morning News
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(w/o enclosures)