



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2009

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2009-10762

Dear Ms. Sims:

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# 351367.

The City of Lubbock (the "city") received a request for the personal cellular telephone records, including all incoming and outgoing text messages, and personal e-mail account records, including incoming and outgoing e-mails related to city business, of the city mayor from March 1, 2006 to the date of the request. You claim that the requested information is not subject to the Act.¹ We have considered your arguments. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments concerning disclosure of requested information).

The Act applies to "public information," which is defined under section 552.002 as:

(a) . . . 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.

¹Although you raise section 552.101 of the Government Code in support of your argument that the Act does not apply to the requested information, we note section 552.101 is an exception to disclosure of information that is subject to the Act. *See* Gov't Code §§ 552.101, .021; *see also id.* § 552.002.

Gov't Code § 552.002(a); *see also id.* § 552.021. Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. Further, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act, if a governmental body owns or has a right of access to the information. *See* Open Records Decision Nos. 462 (1987), 445 (1986); *cf.* Open Records Decision No. 499 (1988). 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, the mere fact that the city does not possess the information at issue does not take the information outside the scope of the Act. *See id.* Furthermore, this office has found information in a public official's personal e-mail account and home telephone records may be subject to the Act where the public official uses the personal e-mail account and home telephone to conduct public business. *See* ORD 635 at 6-7 (appointment calendar owned by a public official or employee is subject to the Act when it is maintained by another public employee and used for public business).

You inform us the mayor was not an elected official from May 18, 2006 to May 16, 2008. In regards to the time period when the mayor was an elected official, you explain the requested e-mail account records are kept in the mayor's personal account, which is not located in a city computer server, "but rather in some third party company's system that serves the [m]ayor's account." You explain the mayor does not hold his personal e-mail account out to the public "as a means to contact him for [c]ity business." Additionally, you state the mayor represents that he uses his "[c]ity-provided account for all [c]ity business related [e-mails], rather than his personal account." You further inform us the city does not expend public funds or personnel costs in maintaining the mayor's personal e-mail account. Based on your representations and our review, we agree the mayor's personal e-mail account records are not collected, assembled, or maintained for the city in connection with the transaction of official business and the city does not own or have a right of access to the mayor's personal e-mail account records. Therefore, the mayor's personal e-mail account records are not subject to the Act and need not be released.

You state the mayor's personal cellular telephone records are not subject to the Act because the city does not provide or pay for the mayor's cellular telephone. You also state, and provide documentation showing, that the city does not provide the mayor with an allowance for the use of his personal cellular telephone. Additionally, you state the mayor does not

hold his cellular telephone out to the public as a means to contact him for city business. Based on your representations, we find the mayor's personal cellular telephone records are not collected, assembled, or maintained by the city in connection with the transaction of official business and the city does not own or have access to the mayor's personal cellular telephone records. Therefore, the mayor's personal cellular telephone records are not subject to the Act and need not be released.

In regards to the requested text messages, you assert that even if they contain information related to the official business of the city, they are not subject to the Act because they are maintained by the mayor as a private individual. 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 text messages maintained by the mayor relate to the official business of the city, they are subject to the Act. To the extent the mayor's text messages do not relate to the official business of the city, they are not subject to the Act and need not be released.

In summary, the mayor's personal e-mail account and cellular telephone records are not subject to the Act and need not be released. To the extent the mayor's text messages do not relate to the official business of the city, they are not subject to the Act and need not be released. To the extent the mayor's text messages relate to the official business of the city, they are subject to the Act and, as you raise no exceptions against their disclosure, must 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.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 at (512) 475-2497.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 351367

Enc. Submitted documents

c: Requestor
(w/o enclosures)