



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2009

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

OR2009-10843

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# 351313.

The City of Lubbock (the "city") received a request for all telephone records, including text messages, from a named councilman's personal cell phone, as well as all e-mails regarding city business from the councilman's personal e-mail account during a specified period of time. The requestor subsequently amended his initial request for information to ask only for city business related telephone records, including text messages, and e-mails from the councilman's personal accounts. You claim that the requested information is not subject to the Act. You state that you have notified the councilman who is the subject of the request of his right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered your arguments. We have also considered comments submitted by the councilman's attorney and the requestor. *See id.*

You claim that the councilman's personal cell phone records, including text messages, and e-mails from the councilman's personal accounts are not public information subject to the Act because the city does not own or have any right of access to this information. The Act

is applicable to "public information," as defined by section 552.002 of the Government Code. Section 552.002(a) provides that "public information" consists of

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, 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). 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* Gov't Code § 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, 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 that the councilman's e-mail account is not on the city computer server, the city has no contract or agreement to provide these personal e-mail accounts, the city has no

ability or right to access the account, the account is not held out to the public for the conducting of city business, and the city expends no funds and uses no personnel to maintain the account. Additionally, you state the councilman represents that he uses his city-controlled account for all city business related e-mails, rather than his personal account. Based on your representations, we agree the councilman'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 councilman's personal e-mail account records. Therefore, the councilman's personal e-mail account records are not subject to the Act and need not be released.

You also state the councilman's personal cell phone records and text messages are not subject to the Act because the city does not provide his cell phone. You also inform us that the city has no contract or agreement to provide his cell phone and that the city does not directly pay or directly reimburse his cell phone expenses. However, you further state that the city provides the councilman with an allowance for the use of his personal cell phone. You assert that even if the requested cell phone records and text messages contain information related to the official business of the city, they are not subject to the Act because they are maintained by the councilman 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 cell phone records and text messages maintained by the councilman relate to the official business of the city, they are subject to the Act, and as you have claimed no exceptions to disclosure for these records, they must be released. To the extent the councilman's cell phone records and 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 councilman's personal e-mail account records are not subject to the Act and need not be released. To the extent the councilman's cell phone records and text messages do not relate to the official business of the city, they are not subject to the Act and need not be released. However, to the extent the councilman's cell phone records and 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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/rl

Ref: ID# 351313

Enc. Submitted documents

c: Requestor
(w/o enclosures)