



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2010

Mr. Larry Roberson  
Assistant Criminal District Attorney  
Bexar County Criminal District Attorney  
300 Dolorosa, 4<sup>th</sup> Floor  
San Antonio, Texas 78205

OR2010-07537

Dear Mr. Roberson:

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# 378718.

Bexar County (the "county") received a request for all correspondence between June 1, 2009, and February 17, 2010, between several named individuals, including correspondence from the county commissioner's personal e-mail accounts.<sup>1</sup> You state some of the responsive information has been released. You claim that the rest of the requested information is not subject to the Act.<sup>2</sup> We have considered your arguments.

You claim that the e-mails maintained on the county commissioner's private e-mail accounts are not public information subject to the Act because the county 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

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<sup>1</sup>As you have not submitted a copy of the amended request submitted on February 18, 2010, we take our description from your brief.

<sup>2</sup>We note that you initially raised sections 552.101, 552.108, 552.109, 552.111, and 552.137 of the Government Code. However, as you make no arguments to support these exceptions, we assume you have withdrawn your claims that these sections apply to the requested information.

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)). This office has found that information in a public official's personal records may be subject to the Act where the public official uses the records to conduct public business. *See* ORD 635 at 6-12 (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 state that even if e-mails exist that were utilized in the transaction of the public's business, the e-mails are not subject to the Act because the county has no ownership or right of access to the information. We disagree. 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). A governmental body may not circumvent the applicability of the Act by conducting official public business in a private medium. *See* ORDs 635 at 12, 425 at 2. In this instance, any responsive information is maintained by an elected county commissioner. Thus, to the extent the e-mails maintained by the county commissioner relate to the official business of the county,

they are subject to the Act. To the extent the county commissioners's e-mails do not relate to the official business of the county, they are not subject to the Act.

You also argue that the county would violate article I, section 9 of the Texas Constitution ("Article I, Section 9") and the Fourth Amendment to the United States Constitution (the "Fourth Amendment") by searching for any responsive information. The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Similarly, Article I, Section 9 provides:

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

You state that searching for the requested documents would require the county's district attorney to conduct a search of a computer located at the county commissioner's private residence. We disagree. Each elected county officer is the officer for public information and the custodian of the information created or received by that county officer's office. Gov't Code § 552.201(b). Therefore, the named county commissioner is the public information officer for his office and custodian of information created by his office. The county's district attorney does not have to search the county commissioner's personal computer to compile responsive information. The only requirement is that the county commissioner, who maintains the information at issue, collect "public information" maintained in his personal e-mail account as custodian of records for his office. Gov't Code § 552.203(1). Upon notice of a request for information that is maintained by that county official, the county official has a duty to provide it to the requestor unless the attorney general rules that it may be withheld. *Id.* After reviewing your arguments, we find you have failed to establish that an elected public official collecting e-mails pertaining to public business violates his or her own rights under Article I, Section 9, or the Fourth Amendment. Thus, we conclude that Article I, Section 9, and the Fourth Amendment do not prohibit the county from collecting information responsive to this request and providing it to our office for review, and ultimately to the requestor if required by the Act.

We also note that a public information officer's failure to make public information available in response to a request may result in criminal penalties. Section 552.203 of the Government Code provides that each officer for public information shall make public information available for public inspection and copying. *See id.* § 552.203. An officer for public

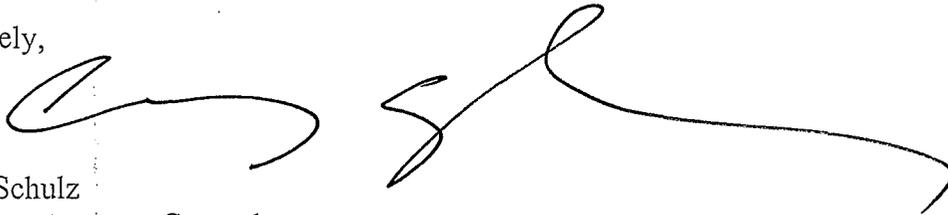
information commits an offense if, with criminal negligence, the officer refuses to give access to, or permit copying of, public information to a requestor. *See id.* § 552.353. An offense under section 552.353 is a misdemeanor punishable by a fine of not more than \$1,000, confinement in the county jail for not more than six months, or both the fine and the confinement. *See id.* § 552.353(e). In addition, a violation under section 552.353 constitutes official misconduct. *See id.* § 552.353(f).

In summary, to the extent the e-mails maintained by the county commissioner relate to the official business of the county, 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 county commissioner's e-mails do not relate to the official business of the county, they are 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.oag.state.tx.us/open/index\\_orl.php](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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Schulz', written over a horizontal line.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/rl

Ref: ID# 378718

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)