



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2013

Mr. Scott R. Peal
County Attorney
Chambers County
P.O. Box 1200
Anahuac, Texas 77514

OR2013-04313

Dear Mr. Peal:

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# 481378.

You inform us Chambers County (the "county") received a request for e-mail correspondence between named individuals and a county commissioner between October 24, 2012 and November 29, 2012.¹ You state the county has released some of the requested information with personal e-mail addresses redacted under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified the Baytown Chamber of Commerce (the "chamber") of the county's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory

¹We take the description of the requested information from your briefing, as it is different from the information requested in the copy of the request for information you submitted. The copy of the request for information you submitted as Exhibit A is a request for information acquired by county officials during a specified meeting, including related county documents or reports generated from the information obtained at that meeting. We note you inform us the county received two requests for information from the same requestor on the same day and assume you submitted Exhibit A, instead of the request for the e-mail correspondence at issue, in error.

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an email address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). You have submitted correspondence from the chamber to the county objecting to the release of the submitted information. We have reviewed the submitted information and comments.

Initially, we must address the chamber's arguments the submitted information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act 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." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* 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 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 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, 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)). Furthermore, this office has found that 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 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).

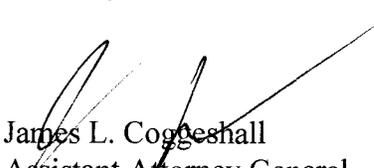
The submitted information consists of an e-mail communication sent from a member of the chamber to a county commissioner. The chamber asserts the communication was received by the commissioner in his capacity as a member of the chamber's board. Thus, we understand the chamber to assert the communication at issue was not made to the county commissioner in his official capacity as commissioner and does not relate to official county

business. Upon review of the information at issue, we agree the submitted information does not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the county. See Gov't Code § 552.021; ORD 635 (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Accordingly, we conclude the submitted information is not subject to the Act. Therefore, the county is not required to release the submitted information in response to this request.

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, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 481378

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)