



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2013

Ms. Donna L. Johnson
Counsel for the City of Dickinson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2013-12118

Dear Ms. Johnson:

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# 493178 (Reference No. COD13-006).

The City of Dickinson (the "city"), which you represent, received a request for e-mails contained in a specified e-mail account regarding specified topics during a specified time period.¹ You state the city has released some information to the requestor. You further state the city will withhold personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² You claim some of the submitted information is not subject to the Act. Alternatively, you claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

¹You state the requestor narrowed his request in response to a cost estimate. See Gov't Code §§ 552.222(b) (governmental body may communicate with requestor to clarify or narrow request), .2615 (requestor may modify request in response to estimate of charges); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing the withholding of certain categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

You contend some of the submitted information, which you have marked, is not subject to the Act. The Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as consisting 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 the information in a governmental body's physical possession constitutes public information and is subject to the Act. See *id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information 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). You inform us the information at issue consists of personal messages that have no connection with the city's official business and constitutes incidental use of e-mail by a city employee. You also inform us this information was not collected or assembled and is not maintained pursuant to any law or ordinance or in connection with the transaction of city business. Based on your representations and our review of the information at issue, we find the information you have marked does not constitute public information for purposes of section 552.002 of the Government Code. See Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). We therefore conclude the information at issue, which you have marked, is not subject to the Act and need not be released in response to the present request for information.³ The remaining information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³As we are able to make this determination, we need not address your remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Kristi L. Wilkins". The signature is written in black ink and is positioned above the typed name.

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 493178

Enc. Submitted documents

c: Requestor
(w/o enclosures)