



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2014

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-02333

Dear Mr. Moore:

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# 513290.

The City of The Colony (the "city") received a request for e-mails from a city resident to the city manager and the mayor during a specified time period. You claim the submitted information is not subject to the Act. Alternatively, you claim some of the submitted information is excepted from disclosure under section 552.137 of the Government Code. We have considered your claims and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You argue the submitted information does not consist of public information subject to the Act. The Act is applicable only to "public information." *See id.* §§ 552.002, .021. Section 552.002(a) defines "public information" as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

Id. § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Furthermore, this office has found information in a public official's personal e-mail account may be subject to the Act where the public official uses the personal e-mail account to conduct public business. See Open Records Decision 635 at 6-8 (1995) (stating information maintained on privately-owned medium and actually used in connection with transaction of official business would be subject to Act). We note the Act's definition of "public information" does not require a public employee or official to create the information at the direction of the governmental body. See Gov't Code § 552.002. Accordingly, the mere fact that a public employee or official generates business-related information using personal resources does not take the information outside the scope of the Act.

The requestor states he "learned that as a result of these emails, [the mayor and city manager] made phone calls . . . and applied pressure to the [leadership] of a local nonprofit organization" to have certain comments about the mayor "removed from the chat forum where they were posted so as not to shed a negative light on city leadership." The requestor

asserts the mayor and city manager were acting in their official capacities in taking this action and therefore the e-mail discussion is "city business[.]" We note we have no indication, and the requestor has provided no information to support his assertion, the mayor or city manager acted in an official capacity regarding the e-mails at issue.

Whether the mayor or city manager acted in an official capacity is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). The city asserts the submitted information is not subject to the Act because the e-mails are purely personal in nature and do not contain information related to the transaction of official business of the city. Based upon the city's representation and our review, we find the submitted information does not constitute public information for purposes of the Act. *See id.* § 552.002; *see also* ORD 635 (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving no or *de minimis* use of state resources). Thus, the submitted information is not subject to the Act, and the city is not required to release it in response to this request.¹

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

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

¹As we reach this conclusion, we do not address the city's arguments under section 552.137 of the Government Code.

Ref: ID# 513290

Enc. Submitted documents

c: Requestor
(w/o enclosures)