



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2015

Ms. Sandra Kim
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2015-07433

Dear Ms. Kim:

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# 560547.

The City of Austin (the "city") received a request for all written and electronic communications between city employees and a named individual or law firm and billing records showing the use of city funds to pay for services of the named law firm. You state the city does not possess information responsive to the portion of the request seeking billing records.¹ You argue the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. V. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

Initially, we address your argument the submitted information is not subject to the Act. The Act applies to “public information,” which is defined in section 552.002 of the Government Code 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; or

(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.

Id. § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and 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 can also encompass information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Information is “in connection with the transaction of official business” if it 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 government function on behalf of a governmental body, and pertains to official business of the governmental body.” Gov’t Code § 552.002(a-1).

The city contends the submitted information is not subject to the Act because the information consists of personal communications between an employee and the employee’s personal attorney. After reviewing the submitted information, we find it is purely personal and does

not constitute information “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[.]” See Open Records Decision No. 635 (1995) (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). Thus, the submitted information is not subject to the Act and need not be released in response to this request.²

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 560547

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining arguments against disclosure.