



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2015

Ms. Ann-Marie Sheely
Assistant County Attorney
County Travis
P.O. Box 1748
Austin, Texas 78767

OR2015-15848

Dear Ms. Sheely:

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# 573885.

The Travis County Attorney's Office (the "county attorney's office") received a request for the County Attorney's phone records for two specified days. You claim some of the requested information is not subject to the Act. You claim portions of the remaining requested information are excepted from disclosure under sections 552.117 and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the county attorney's office has marked portions of the submitted phone records as not responsive to the instant request because they do not pertain to the specified time period. This ruling does not address the public availability of non-responsive information, and the county attorney's office need not release non-responsive information in response to the present request.

¹Although you claim section 552.1175 of the Government Code for portions of the requested information, we note section 552.117 is the proper exception to raise for information the county attorney's office holds in an employment capacity.

Next, the county attorney's office contends some of the responsive information 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 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.

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). You explain some of the responsive phone records "are purely personal in nature and were not written, produced, collected or maintained pursuant to any law or in connection with the transaction of official Travis County business." 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). Upon review, we find the information we have marked does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the county attorney's office. See Gov't Code § 552.002. Thus, we conclude the information we have marked is not subject to the Act and need not be released in response to this request.² However, as we find the remaining responsive information is subject to the Act, we will address your arguments against its disclosure.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who

²As we are able to make this determination, we need not address your arguments against disclosure of this information.

requests this information be kept confidential under section 552.024 of the Government Code.³ *See id.* § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. We have marked the cellular telephone number of the County Attorney and additional information subject to section 552.117(a)(1). The county attorney's office informs us the County Attorney personally pays for the cellular telephone service, and the County Attorney has elected to keep his personal information confidential under section 552.024. Therefore, we find the county attorney's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the remaining responsive information is not subject to section 552.117(a)(1), and the county attorney's office may not withhold it on that basis.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the county attorney's office must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, the information we have marked is not subject to the Act and need not be released in response to this request. The county attorney's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The county attorney's office must withhold the account numbers we have marked under section 552.136 of the Government Code. The county attorney's office must release the remaining responsive information.

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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 573885

Enc. Submitted documents

c: Requestor
(w/o enclosures)