



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 6, 2015

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-23426

Dear Ms. Ayala:

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# 586317 (OGC# 164118).

The University of Texas at Austin (the "university") received a request for all e-mails sent to a named former university employee from a specified type of e-mail address during a specified time period. You state you have released some information to the requestor. You indicate the university will redact information pursuant to section 552.136(c) of the Government Code and under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).¹ You claim the submitted information is not subject to the Act. We have considered your arguments and reviewed the submitted representative sample of information.²

¹Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

The Act is applicable only to “public information.” *See* Gov’t Code §§ 552.002, .021. “Public information” 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;

(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). Section 552.002(a-1) also provides the following:

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.

Id. § 552.002(a-1). 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 state some of the information at issue relates to the participation of the named former employee as a member of the National Collegiate Athletics Association’s Division I Council (the “council”) or the Big 12 Conference’s Administration Cabinet (the “cabinet”), neither of which are governmental bodies as defined in the Act. You state the information at issue was shared with the named former employee in his capacity as a member of the council or the cabinet, and not in performance of his duties for the university. You state the e-mails at issue were not collected, assembled, or maintained in connection with the transaction of official university business. You further inform us some of the information at issue consists of e-mails that are entirely personal in nature, have no connection with the university’s business, and constitute incidental use of the university’s resources. You state the university allows for incidental use

of such resources by employees and officials. You further state the use of the university's resources to create and maintain the information at issue was *de minimis*. 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). Based on your representations and our review of the information at issue, we agree most of the information at issue 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 university. See Gov't Code § 552.002. Therefore, we conclude this information is not subject to the Act and need not be released in response to the present request for information. However, we find the remaining information, which we have marked, was written, produced, assembled, or maintained in connection with the transaction of official business by a university employee in his official capacity. Thus, this information is subject to the Act. As you raise no further exceptions to disclosure, the university must release the information we have marked.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 586317

Enc. Submitted documents

c: Requestor
(w/o enclosures)