



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2016

Ms. Sylvia Porter
Assistant County Attorney
County of El Paso
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2016-08522

Dear Ms. Porter:

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# 608711 (El Paso County File No. OP-16-048).

The El Paso County Veterans Assistance Office (the "county") received a request for six categories of information pertaining to the National Association of County Veterans Service Officers ("NACVSO"). You state the county has no information responsive to portions of the request.¹ You assert the submitted information is not subject to the Act. Alternatively, you claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. You also state release of this information may implicate the interests of NACVSO. Accordingly, you state, and provide documentation showing, you notified NACVSO of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *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). We have received comments from NACVSO. We have considered the submitted arguments and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

You and NACVSO both assert the submitted 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.

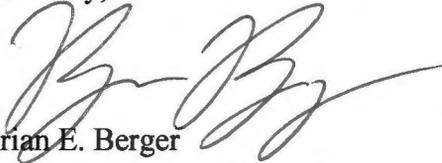
Id. § 552.002(a). Information is “in connection with the transaction of official business” if it is “created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body.” *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 the information at issue consists of personal correspondence of a county employee acting in his capacity as an executive board member of NACVSO, a private non-profit organization. You further state the information has no connection with the official business of the county, but rather pertains solely to NACVSO organizational affairs. You inform us this information was created through incidental use of e-mail by a county employee, and we understand the use of county 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 find the information at issue does not constitute public information for purposes of section 552.002 of the Government Code. *See id.* at 4. Therefore, this information is not subject to the Act, and the county need not release it in response to this request.²

²As our ruling is dispositive, we do not address your other arguments to withhold this 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.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 608711

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)