



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 20, 2016

Mr. Jonathan L. Almanza  
Assistant District Attorney  
Hidalgo County  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2016-08916

Dear Mr. Almanza:

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# 606505 (File No. 2016-0010(55)-DA.CO).

The Hidalgo County Public Affairs Office (the "county") received a request for the internet activity of fifteen named employees during a specified period of time. You claim portions of the submitted information are not subject to the Act. Alternatively, you claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

You contend portions of the submitted information are 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;

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<sup>1</sup>We 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.

(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 explain the submitted information contains purely personal internet activity that has no connection with the transaction of official business of the county. 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, you assert portions of the information at issue do not constitute public information subject to the Act. Accordingly, to the extent the internet activity 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 county, it is not subject to the Act and need not be released. See Gov't Code § 552.002. However, to the extent the internet activity does 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, it is subject to the Act, and must be released unless an exception to disclosure applies to the information. See *id.* §§ 552.301 (a), .302. To the extent the internet activity relates to the official business of the county, we will consider your argument under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the

Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we find the county has failed to demonstrate the information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the county may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the internet activity 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 county, it is not subject to the Act and need not be released. To the extent the internet activity does 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, it is subject to the Act, and must be released.

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](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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/bw

Ref: ID# 606505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)