



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2016

Mr. Martin Paredes
El Paso Times
1000 East Robinson Street, Suite 1
Orlando, Florida 32801

Dear Mr. Paredes:

This notice is in regards to your correspondence requesting our office's assistance in obtaining information you requested from the El Paso County Attorney's Office (the "county attorney's office") under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your correspondence was assigned ID# 632618.

The county attorney's office has submitted to this office the enclosed correspondence that all existing information responsive to your request has been made available to you. When a governmental body represents to this office that it has released all existing responsive information, we must accept its statement. Under the Act, the enforcement authority of the Office of the Attorney General does not include on-site inspections of records held by another governmental office. *See* Gov't Code § 552.321. Accordingly, we will close our file on this matter.

Should you have any questions regarding this letter, please call the Open Government Hotline at (877) 673-6839.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Behnke".

Joseph Behnke
Assistant Attorney General
Education and Enforcement Section
Open Records Division

JB/sb

Ref: ID# 632618

Enclosure

c: Ms. Holly C. Lytle
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio
El Paso, Texas 79901
(w/o enclosure)



RECEIVED
SEP 27 2016
OPEN RECORDS DIVISION

632618
6326578

JO ANNE BERNAL
EL PASO COUNTY ATTORNEY
500 EAST SAN ANTONIO
ROOM 503, COUNTY COURTHOUSE
EL PASO, TEXAS 79901

(915) 546-2050
FAX: (915) 546-2133

September 27, 2016

The Honorable Ken Paxton *Via Fax (512) 481-1992*
Attorney General, State of Texas
Attn: Education and Enforcement Section, Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

RE: PIA Enforcement Complaint from Martin Paredes (Complaint ID # 632618)

Dear General Paxton:

On September 13, 2016, El Paso County Attorney Jo Anne Bernal received your letter concerning the complaint described above. The El Paso County Judge, Veronica Escobar did receive a Public Information Act (PIA) request from Martin Paredes on July 18, 2016. I responded to that request on July 29, 2016 on behalf of the County Judge and released one responsive email that we believed constituted public information under the PIA. Attached are copies of the request, my response and the released email.

Section 552.301 of the Texas Government Code only requires a governmental entity to submit a request to the Attorney General if the governmental entity wants to withhold public information in its possession in accordance with an exception under Subchapter C of the PIA. Public Information is defined under the PIA in section 552.002 of the Texas Government Code as the following:

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“DEFINITION OF PUBLIC INFORMATION; MEDIA CONTAINING PUBLIC INFORMATION.

(a) In this chapter, "public information" means 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.

(a-1) 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.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

(b) The media on which public information is recorded include:

- (1) paper;
- (2) film;
- (3) a magnetic, optical, solid state, or other device that can store an electronic signal;
- (4) tape;
- (5) Mylar; and
- (6) any physical material on which information may be recorded, including linen, silk, and vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.”

Thus, only information that was written, produced, collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business of the County of El Paso would require the County Judge to submit a request to the Attorney General for the authority to withhold. The attached response that I sent to Mr. Paredes clearly establishes that

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the information he was requesting did not constitute official business of the County of El Paso. Thus, since it did not constitute Public Information under the PIA, there was no obligation for the County Judge to submit a request to the Attorney General to claim an exception from release under Subchapter C of the PIA.

Mr. Paredes argues that the County Judge should err on the side of caution and submit any potentially responsive documents to the Attorney General and let him decide whether or not the document constitutes public information under the PIA. First, the PIA itself does not require governmental entities to defer that decision to the Attorney General. It only requires governmental entities to defer to the Attorney General the decision as to whether or not an exception under subchapter C applies. Further, requiring the governmental entity to always defer to the Attorney General may cause great hardship on the governmental entity. It is not a hardship or an infringement on anyone's right to privacy to defer to the Attorney General if all the responsive documents were created or exist on the governmental entity's computer systems. This is because the governmental computer system should contain only a de minimis amount of information that does not constitute public information. Further, if the governmental employee or officer created or maintained private information on the governmental entity's system, the employee or officer should be aware of a reduced right to privacy.

If, however, the information is contained on a private cellular phone or email system, the amount of responsive information may be voluminous and very private. This specific request illustrates this point. Mr. Paredes asks for any emails, text messages or social media private communications between Veronica Escobar and any elected officials, including Susie Byrd and others. Luckily, he limits the request to just two specific days, but governmental entities are not always so lucky. The County Judge has been a lifelong El Paso resident, who has been active in the community for a very long time – long before she became the County Judge. She knows a large number of elected officials, some through her current position, but many she has known and been friends with for years before her career as an elected official. Susie Byrd is one such individual. Judge Escobar has been personal friends with Susie Byrd for approximately 20 years, which long predates when either of them ever became an elected official. Thus, to ask for any documents to or from her, even if those documents are on the County Judge's private cellular phone or email account, could clearly result in many responsive documents which have absolutely nothing to do with the official business of the County of El Paso. If she is required to send all her correspondence to the Attorney General, it could very well include correspondence that is very private in nature. To require that of governmental employees and officials would be an invasion of their right to privacy.

Further, if only the Attorney General has the right to rule on what does or does not constitute public information under the PIA, does every governmental employee and official now have an obligation to retain all text messages and emails on private devices even if the employee or official does not believe the communications constitute public information? Most people do not retain their personal emails and text messages, because they are not under any legal obligation to do so. If, however, only the Attorney General has the right to determine what is or

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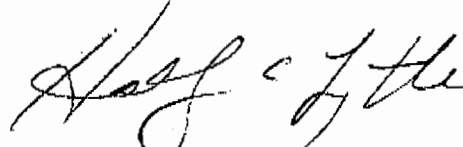
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is not public information, then government employees and officials may feel the need to retain all of their personal emails and texts out of fear that they will later be accused of destroying public information without regard to the entity's retention schedules.

Thus, the County Judge and the County Attorney believe we have fully complied with the PIA, in that, we have released the only document in the County Judge's possession that constitutes public information under the PIA. If you desire to discuss this further, please contact me at (915) 538-2050.

I appreciate your attention to this matter.

Sincerely,



HOLLY C. LYTLE
Assistant County Attorney

Attachments