



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2008

Mr. William J. Delmore, III
Assistant District Attorney
Harris County District Attorney
1201 Franklin Street, Suite 600
Houston, Texas 77002-1923

OR2008-04491

Dear Mr. Delmore, III:

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# 306369.

The Harris County District Attorney's Office (the "district attorney") received a request for specified e-mails sent or received by four named individuals and from specified time periods. You state that you are releasing some of the requested e-mails to the requestor. You claim that a portion of the submitted information is not subject to the Act. You also claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.117 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note that a portion of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2008-04403 (2008) and 2008-04466 (2008). We presume that the facts and circumstances have not changed since the issuance of these prior rulings. To the extent that the information at issue is identical to the information previously requested and ruled upon by this office, we conclude that the district attorney must withhold or release the information in accordance with Open Record Letter Nos. 2008-04403 and 2008-04466. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information

¹Although you also raise sections 552.101, 552.103, 552.109, and 552.111 of the Government Code, you have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we presume you no longer assert these exceptions to disclosure. Gov't Code §§ 552.301, .302.

was not previously requested and ruled upon by this office, we will address your arguments for this information.

Next, we note that some of the submitted e-mails are not responsive to the instant request for information because they were created after the date of the request or outside the requested time periods. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney is not required to release that information in response to the request. We have marked the non-responsive e-mails.

You claim that the e-mails contained in Appendices C, D, and E are not subject to the Act. The Act is only applicable to "public information." See Gov't Code § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. See Open Records Decision No. 462 (1987).

After reviewing the e-mails at issue, we agree that a portion of the e-mails contained in Appendices C, D, and E do not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the district attorney. See Gov't Code § 552.021; see also 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, we conclude that the e-mails we have marked are not subject to the Act, and need not be released in response to the request.² However, the remaining e-mails in Appendices C, D, and E were created in connection with the transaction of official business by or for the district attorney. Therefore, the remaining e-mails are subject to the Act and may only be withheld if they are excepted from disclosure under an exception to the Act.

Next, you assert that Appendix F is excepted from disclosure under sections 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You

²As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

state that the information at issue relates to pending criminal cases. Based upon this representation, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we find that section 552.108(a)(1) is applicable to Appendix F and it may be withheld on that basis.

We note that the remaining information contains e-mail addresses subject to section 552.137 of the Government Code.³ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). Therefore, the district attorney must withhold the e-mail addresses we have marked in accordance with section 552.137 unless the district attorney receives consent for their release.

In summary, to the extent the information at issue in the present request is identical to the information addressed in Open Records Letter Nos. 2008-04403 and 2008-04466, the district attorney must withhold or release the information in accordance with these rulings. The e-mails we have marked in Appendices C, D, and E are not subject to the Act and need not be released. Appendix F may be withheld under section 552.108. The e-mail addresses we have marked must be withheld under section 552.137 unless the district attorney receives consent for their release. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 306369

Enc. Submitted documents

c: Ms. Carolyn Canville
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(w/o enclosures)