



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 10, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-01748

Dear Ms. Sandoval-Walker:

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# 334539.

The City of El Paso (the "city") received a request for a specific e-mail sent to Mayor John Cook and City Representative Eddie Holguin. You claim that the submitted information is not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is not responsive to the instant request. The request seeks a specific e-mail. However, you have also submitted an incident report. The incident report is not responsive to the request. Accordingly, the city need not release non-responsive information and this ruling will not address that information.

Next, you assert that the submitted e-mail is not subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained

¹We note that you raise section 552.101 in conjunction with section 552.108. However, section 552.101 does not encompass other exceptions found in the Act. See Open Records Decision No. 676 at 1-3 (2002).

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). Under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. *See* Open Records Decision No. 635 at 4 (1995). In addition, section 552.001 states it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

You generally assert that the submitted e-mail is not maintained under a law or ordinance or in connection with the transaction of official business, therefore, it does not constitute public information for the purposes of section 552.002. Having considered your arguments and reviewed the document at issue, we find that the submitted e-mail was collected and is maintained by the city in connection with the transaction of official city business. We therefore conclude that the submitted e-mail is public information under section 552.002 that must be released unless it falls within an exception to public disclosure. *See* Gov't Code §§ 552.002, .021.

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." *Id.* § 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 state that the submitted e-mail relates to a pending criminal investigation. Based upon this representation, we find that the release of the submitted e-mail 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 the city may withhold the submitted e-mail under section 552.108(a)(1) of the Government Code.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/cc

Ref: ID# 334539

Enc. Submitted documents

cc: Requestor
(w/o enclosures)