



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2009

Mr. Michael M. Kelly
Assistant Criminal District Attorney
County of Victoria
205 North Bridge Street, Suite #301
Victoria, Texas 77901

OR2009-05629

Dear Mr. Kelly:

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# 341041.

The Victoria County District Attorney's Office (the "district attorney") received a request for information related to "8-liner machines and the application of Texas Penal Code §47.01(4)(B) [~~including~~] advisory letters provided to operators of game machines, business owners, property owners, and law enforcement." The requestor excluded from the request "records of currently open investigations and internal correspondence that qualifies under the work product immunity." You state that some responsive information will be released to the requestor, but claim that some of the submitted information is excepted from disclosure under sections 552.108 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

We first note that portions of the submitted information, which we have marked, are not responsive to the instant request because the requestor specifically excluded from the request "internal correspondence that qualifies under the work product immunity." The district

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

attorney need not release non-responsive information in response to this request and this ruling will not address that information.

You claim that portions of the information in Appendix F are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You claim that release of some of the information in Appendix F “can interfere with detection, investigation and prosecution of these types of offenses.” You have failed to explain, however, how the release of the information at issue would interfere with a particular pending criminal investigation or prosecution. Furthermore, you have not shown that release of the information at issue would subject any individual to possible intimidation or harassment or would chill the willingness of other individuals to come forward. *See, e.g.*, Open Records Decision Nos. 329 (1982), 313 (1982), 297 (1981). Therefore, you have failed to demonstrate how section 552.108 is applicable to the information at issue. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must reasonably explain how and why exception is applicable to the information at issue); Open Records Decision No. 252 at 3 (1980). Accordingly, we conclude that the district attorney may not withhold any portion of the submitted information in Appendix F under section 552.108 of the Government Code.

You also raise section 552.137 of the Government Code. This section 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). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government

employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the district attorney must withhold the e-mail addresses you have marked in Appendices D and F under section 552.137.

Finally, we note that some of the submitted information in Appendix E may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district attorney must withhold the e-mail addresses you have marked in Appendices D and F under section 552.137 of the Government Code. The remaining responsive information must be released, but any copyrighted information may only be released in accordance with copyright law.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 341041

Enc. Submitted documents

c: Requestor
(w/o enclosures)