



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 16, 2013

Ms. Kelley Messer  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2013-14318

Dear Ms. Messer:

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# 496534.

The City of Abilene (the "city") received a request for all e-mails from the requestor's city Outlook e-mail account. You claim that portions of the requested information are not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address your assertion that some of the submitted information 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 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."

---

<sup>1</sup>We 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.

*Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides that 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).

You claim some of the submitted information, which you have indicated as "personal e-mail accounts," is not subject to the Act because it is purely personal in nature and does not contain information related to city business. However, you state the requestor's two computers have been seized, and his entire Outlook account is "an important component of an ongoing criminal investigation." Thus, we find the requested information constitutes "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 city. *See id.* § 552.021. Therefore, the requested information constitutes "public information" as defined by section 552.002(a) and is subject to the Act. Accordingly, we will address your submitted arguments against disclosure.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). As discussed above, you state the requestor's computers are part of an active criminal investigation for possible possession of child pornography. You further state the entire Outlook account is an important component of the ongoing criminal investigation. Based upon your representation, we conclude release of the requested information will 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the city may withhold the requested information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

---

<sup>2</sup>Because our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/dls

Ref: ID# 496534

Enc. Submitted documents

c: Requestor  
(w/o enclosures)