



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2014

Ms. Maureen E. Ray
Special Administrative Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

OR2014-16792

Dear Ms. Ray:

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# 538575.

The State Bar of Texas (the "state bar") received a request for a specified e-mail concerning the requestor's client. You claim the submitted information is not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

We address your contention that the submitted information is not subject to the Act. The Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as

[] 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.

Id. § 552.002(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.*; *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information is subject to the Act even if a governmental body does not physically possess it as long as it is written, produced, 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 contend the submitted information consists of records that were created, are maintained, or are held by the Chief Disciplinary Counsel ("CDC") on behalf of the Commission for Lawyer Discipline ("CFLD"), and thus, pursuant to rule 4.09 of the Texas Rules of Disciplinary Procedure, the submitted information is not subject to the Act.

You state:

Rule 5.01 of the Texas Rules of Disciplinary Procedure ("TRDP") provides that the General Counsel of the State Bar serves as the CDC; the Rule also provides, however, that if the CFLD determines that the General Counsel should no longer serve as the CDC, it shall so notify the Board of Directors of the State Bar and the State Bar shall provide adequate funds to the CFLD sufficient for it to select and hire an attorney as CDC. In such event, Rule 5.01 states that the CFLD "alone shall possess the right of selection." Further, Rule 5.03 of the TRDP provides that, on disciplinary and disability matters, the CDC is accountable only to the CFLD.

In fiscal year 1999-2000, the CFLD elected this option and selected a CDC separate from the State Bar's General Counsel. This structure has remained in place to the present. Under this structure, the CDC's purview is the attorney disciplinary system, while the State Bar's General Counsel serves as administrative counsel to the State Bar and its leadership. The duties of the CDC under this structure are delineated in Rule 5.02 of the TRDP. While

some of the CDC's records eventually become State Bar records subject to the Act, such as its submission to the State Bar of a proposed budget, the vast majority of its records are generated in its work serving as the CFLD's attorney, administering the attorney discipline and disability system for the CFLD, and performing "such other duties relating to disciplinary and disability matters as may be assigned by the Commission [CFLD]." Rule 5.02(M), TRDP.

Rule 4.09 of the Texas Rules of Disciplinary Procedure provides as follows:

The [CFLD] is not a "governmental body" as that term is defined in Section 551.001(3) of V.T.C.A., Government Code, and is not subject to either the provisions of the Open Meetings Act or the Open Records Act.

Tex. R. Disciplinary P. 4.09. You inform us the submitted information consists of a record relating to a disciplinary matter currently pending with the CDC. Based on your representations and our review, we agree the submitted information is held by the CDC on behalf of the CFLD. Accordingly, we find these records are records of the CFLD for purposes of rule 4.09 of the Texas Rules of Disciplinary Procedure. Therefore, pursuant to rule 4.09 of the Texas Rules of Disciplinary Procedure, we conclude the submitted information is not subject to the Act and need not be released in response to this request. Accordingly, we need not address your remaining argument 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, 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/bhf

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Enc. Submitted documents

c: Requestor
(w/o enclosures)