



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2015-04787

Dear Ms. Winn:

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# 556110.

Mr. David Gonzalez, attorney pro tem (the "attorney pro tem") and co-counsel to attorney pro tem Mr. Michael McCrum, received a request for the total amount he has been paid for a specified case, including the hourly wage and any invoices he submitted to Travis County for reimbursement. Initially, the attorney pro tem claims the requested information consists of judicial records not subject to release under the Act. In the alternative, he claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered these arguments and reviewed the submitted representative sample of information.¹

Section 552.002(a) of the Government Code 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:

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.

- (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.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Gov't Code § 552.002(a), (a-1). However, the Act's definition of "governmental body" does not include the judiciary. *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but, instead, is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035; Tex. R. Jud. Admin. 12 (public access to judicial records). Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992).

A senior judge for the Travis County Criminal District Courts appointed the attorney pro tem for the specified case. *See* Crim. Proc. Code art. 2.07. The information at issue consists of invoices the attorney pro tem submitted to Travis County for payment of legal services. Accordingly, the attorney pro tem asserts the requested information was collected and is maintained by the judiciary. However, we note the attorney pro tem created and maintains the invoices in his own capacity as attorney pro tem and in the course of official business. Thus, we find the information at issue is subject to the Act. Accordingly, we will address the claimed exception for withholding the requested information under the Act.

We note the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The documents at issue are invoices submitted to Travis County for payment of legal services, and are therefore subject to section 552.022(a)(3). Thus, the attorney pro tem may only withhold this information if it is confidential under "other law." Although the attorney pro tem raises section 552.108 of the Government Code, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the information may not be withheld under section 552.108 of the Government Code. As no further exceptions to disclosure have been raised, the requested information must be released.

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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 556110

Enc. Submitted documents

c: Requestor
(w/o enclosures)