



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 24, 2015

Mr. W. Scott Carpenter
Mr. Mark LaForge
Assistant District Attorneys
Fort Bend County District Attorney's Office
301 Jackson Street
Richmond, Texas 77469-3108

OR2015-24785

Dear Mr. Carpenter and Mr. LaForge:

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# 588274.

The Fort Bend County District Attorney's Office (the "district attorney's office") received a request for a specified case file. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body is not acting as a member of the public in doing so. Thus, exceptions to public disclosure under the Act do not control

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

the official's right of access to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district). In this instance, we note the requestor is the Criminal District Attorney for Waller County (the "county"). The requestor states he is requesting the information at issue in order to investigate potential violations of state law. You and the requestor explain, at the request of the requestor, the district attorney's office was appointed as District Attorney Pro Tem for the county with respect to the case at issue due to a conflict of interest of the requestor. *See* Crim. Proc. Code art. 2.07. Thus, we find the district attorney's office maintains the information at issue in its capacity as District Attorney Pro Tem for the county. You and the requestor further explain any conflicts of interest the requestor had with the case at issue ended in early 2015. The requestor informs us, and provides documentation demonstrating, by letter dated July 28, 2015, the judge for the 506th Judicial District Court released the district attorney's office from its appointment, noted the requestor was released from any conflicts of interest regarding the matter, and instructed the district attorney's office to return to the requestor all investigative and case files related to the appointment. Upon review of the submitted information and consideration of the submitted arguments, we find the requestor was acting in his official capacity in requesting the specified documents. The requestor, therefore, has an inherent right of access to this information, and it must be provided to him. The release of this information in this specific instance does not constitute a release to the general public. *See* Open Records Decision No. 666 at 4 (2000) (municipality's disclosure to municipally-appointed citizen advisory board does not constitute release to public as contemplated under section 552.007 of Government Code). We note, because the release of this information to this requestor is not a release to the public, the requestor must be cautious in maintaining the information in the same manner it is maintained by the district attorney's office in its capacity as District Attorney Pro Tem for the county. *See generally* Gov't Code § 552.352 (criminal penalties imposed for release of confidential information).

We note, if the request for information was a request under the Act from a member of the public, the district attorney's office did not comply with section 552.301 of the Government Code. Section 552.301 prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *Id.* § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request), (e) (requiring governmental body to submit within fifteen business days of receiving request for information comments explaining applicability of raised exceptions, copy of request for information, signed statement of date governmental body received request or evidence sufficient to establish date, and copy of information governmental body seeks to withhold or representative samples). The requestor states, and provides documentation demonstrating, he originally requested the information at issue in April of 2015 and the district attorney's office denied the request by a letter dated April 28, 2015, without seeking a decision from this office. Thus, the district attorney's office violated section 552.301 by failing to seek a decision from this office within the time periods prescribed by section 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the

information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions).

In summary, the district attorney's office must release the submitted information to the requestor in his official capacity as the Criminal District Attorney for the county.

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

Ref: ID# 588274

Enc. Submitted documents

c: Requestor
(w/o enclosures)