



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2008

Ms. Zindia Thomas
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2008-06191

Dear Ms. Thomas:

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# 309443.

The Office of the Attorney General (the "OAG") received a request for 1) e-mails from six months prior to the date of the request between Charles Rosenthal, the Harris County District Attorney's Office (the "district attorney's office"), and the OAG and 2) information gathered as a result of the OAG's investigation into removal of Mr. Rosenthal from office because of his use of the county's e-mail account. The OAG has released some information but asserts the remaining information is excepted from disclosure pursuant to sections 552.107, 552.108, and 552.111 of the Government Code. The OAG has also notified the district attorney's office of the request, and the district attorney's office submitted comments objecting to the release of information it had provided to the OAG pursuant to an interagency transfer agreement. *See* Gov't Code § 552.304 (interested party may submit written comments

concerning availability of requested information).¹ We have considered and reviewed the submitted arguments and representative sample of documents.²

First, the district attorney's office argues any personal e-mail messages are not public information subject to the Act. Section 552.002 defines "public information" as information that is collected or maintained by a governmental body in connection with the transaction of official business. *Id.* § 552.002. The OAG obtained the e-mails at issue in conducting its removal investigation. Thus, the OAG collected the e-mails in conducting its official business, and therefore, the e-mails are public information subject to the Act.

Next, we note the documents include a contract and documents that have been filed with a court. Information in a contract relating to the expenditure of public funds by a governmental body and information that is also contained in a public court record are public information and not excepted from disclosure unless the information is expressly confidential under law. *Id.* § 552.022(a)(3), (17). Sections 552.103 and 552.108 are discretionary exceptions and do not make information confidential.³ Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (section 552.103 may be waived), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the OAG may not withhold the marked contract and court records under section 552.103 or 552.108.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OAG explains the information relates to the Criminal Justice Divisions' pending criminal case that resulted from their involvement in the removal proceedings. Based upon this representation, we conclude that release of the information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City*

¹The district attorney's office submitted documents which it asserts are excepted from public disclosure. However, this decision only addresses records the OAG maintains and submitted as responsive to the request for its records.

²We 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.

³The OAG asserted section 552.103 of the Government Code on behalf of the district attorney's office for the court documents.

of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, based on the OAG's representation, the OAG may withhold the information from disclosure under section 552.108(a)(1).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, the OAG may withhold the information from disclosure based on section 552.108(a)(1). Because section 552.108 is dispositive, we do not address the other submitted arguments.

In summary, the OAG must release the marked contract and court documents. With the exception of basic information, which must be released, the OAG may withhold the remaining information pursuant to section 552.108(a)(1).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

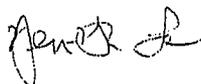
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 309443

Enc. Marked documents

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