



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2011

Mr. Robert N. Bland, IV
District Attorney
Ector County
300 North Grant, Room 305
Odessa, Texas 79761

OR2011-08981

Dear Mr. Bland:

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# 421526.

The Ector County District Attorney (the "district attorney") received a request for all e-mails during a specified time period sent to or from three named individuals' Ector County e-mail addresses. You claim the submitted e-mails and attachments are excepted from disclosure under sections 552.108, 552.109, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted information pertaining to only one of the three individuals named in the request. To the extent responsive information pertaining to the remaining two named individuals existed and was maintained by the district attorney on the date the district attorney received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

¹Although you also raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn your claim under this exception. *See* Gov't Code §§ 552.301, .302.

concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108 of the Government Code provides, in part:

(a) 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(1), (4). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), (4), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state some of the submitted information was prepared by attorneys representing the state in anticipation of, or in the course of preparation for, criminal litigation, and the information reflects the mental impressions and legal reasoning of those attorneys. Further, we note some of the documents reflect on their faces they pertain to specific pending or anticipated criminal prosecutions. Thus, based on your representations and our review, we conclude most of the submitted information, which we have marked, is subject to section 552.108(a)(4) of the Government Code.

You generally assert the remaining information relates to cases pending with the district attorney. The remaining information, however, pertains to purely administrative and personnel matters. You have not explained, or otherwise demonstrated, how release of the remaining information would interfere with the detection, investigation, or prosecution of crime. Therefore, we find the district attorney has failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information. Consequently, the district attorney may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney may withhold the information we have marked under section 552.108(a)(4) of the Government Code.

Section 552.109 of the Government Code excepts from public disclosure “[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]” Gov’t Code § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the doctrine of common-law privacy test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In that case, the court held common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). You generally assert some of the remaining information is excepted under section 552.109. Although the remaining information is correspondence of an elected office holder, you have failed to demonstrate how any of this information constitutes highly intimate or embarrassing information. Consequently, the district attorney may not withhold any part of the remaining information under section 552.109 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Additionally, section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is paid for by the employee with his or her own funds. See Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). The district attorney may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

We have marked a former district attorney employee's personal cellular telephone number in the remaining information. You have not informed us whether or not the former employee timely chose to not allow public access to his personal information. Therefore, if the former employee timely requested confidentiality for his personal information, the district attorney must withhold the marked cellular telephone number pursuant to section 552.117(a)(1) of the Government Code. If the former employee did not timely request confidentiality, the district attorney may not withhold the marked cellular telephone number under section 552.117(a)(1) of the Government Code.

We note the remaining information includes an e-mail address of a member of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² See Gov't Code § 552.137(a)-(c). The e-mail address at issue, which we have marked, is not specifically excluded by section 552.137(c). As such, the district attorney must withhold the marked e-mail address under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.³ See *id.* § 552.137(b).

In summary, with the exception of basic information, the district attorney may withhold the information we have marked under section 552.108(a)(4) of the Government Code. If the former employee whose cellular telephone number we have marked timely requested confidentiality for his personal information, the district attorney must withhold the marked cellular telephone number pursuant to section 552.117(a)(1) of the Government Code. The district attorney must withhold the e-mail address we have marked under section 552.137 of the Government Code. The district attorney must release the remaining information.

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.

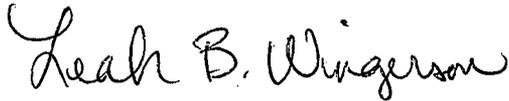
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 421526

Enc. Submitted documents

c: Requestor
(w/o enclosures)