



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 6, 2011

Ms. Josie Ramirez Solis  
Assistant District Attorney  
Hidalgo County District Attorney's Office  
100 N. Closner, Room 303  
Edinburg, Texas 78539

OR2011-12841

Dear Ms. Solis:

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# 428886.

The Hidalgo County District Attorney's Office (the "district attorney") received a request for certain specified e-mails regarding cause numbers CR-3669-10-C and CR-3670-10-C. You claim the submitted information is excepted from disclosure under sections 552.107, 552.108, and 552.111 of the Government Code and privileged under section 30.006 of the Texas Civil Practice and Remedies Code and rule 192.5 of the Texas Rules of Civil Procedure.<sup>1</sup> You also state you have notified two interested third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments submitted by the requestor. *Id.* We have considered the submitted arguments and reviewed the submitted information.

The submitted information consists of e-mails communicated between the district attorney and either the alleged victim of a crime or the alleged victim's attorney. The requestor in this instance represents the alleged victim's attorney. The requestor argues the district attorney

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<sup>1</sup> Although you also raise section 552.101 of the Government Code in conjunction with rule 192.5 of the Texas Rules of Civil Procedure and section 30.006 of the Texas Civil Practice and Remedies Code, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

may not now withhold the submitted e-mails that were originally communicated with its client. We agree the Act does not permit selective disclosure of information to the public. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Thus, as a general rule, if a governmental body voluntarily releases information to a member of the public, the information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). However, upon review of the submitted e-mails, we find none of them were communicated to the requestor's clients as members of the public. Rather, the e-mails in question were communicated to the requestor's clients in their capacity as victims of an alleged crime. We find such a transfer of information does not amount to a public disclosure that triggers the section 552.007(b) selective disclosure prohibition. *See generally* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to section 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to section 552.108). Therefore, the district attorney is not prevented from claiming an exception under the Act to the public disclosure of the information.

You seek to withhold the submitted information under section 552.108 of the Government Code. Section 552.108 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:

...

(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.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(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)(4), (b)(3). A governmental body that claims an exception to disclosure under 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, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You contend the submitted e-mails reflect the mental impressions and legal reasoning of the district attorney related to its prosecution of cause numbers CR-3669-10-C and CR-3670-10-C. Upon review, we agree the submitted e-mails either were prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflect the mental processes or legal reasoning of an attorney representing the state. Consequently, the district attorney may withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>2</sup>

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](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/agn

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 428886

Enc. Submitted documents

c: Requestor  
(w/o enclosures)