



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2011

Ms. Myrna S. Reingold
Galveston County Legal Department
County Courthouse
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2011-17581

Dear Ms. Reingold:

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# 437219.

The Galveston County District Attorney's Office (the "district attorney") received a request for seven categories of communications pertaining to judges volunteering to participate in "no refusal" weekends. You state the district attorney has released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.108, 552.117, 552.1175, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the district attorney received the instant request. The district attorney need not release non-responsive information in response to this request, and this ruling will not address that information.

You seek to withhold some of the responsive e-mails under section 552.108 of the Government Code. Section 552.108 of the Government Code provides, in part:

(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:

¹Although you raise section 552.024 of the Government Code as an exception to disclosure, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

...

(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(b)(3). A governmental body claiming 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 state the responsive e-mails you have indicated reflect the mental impressions and legal reasoning of prosecutors for the district attorney with regard to no-refusal weekends. You state this information was created in anticipation of or in the course of preparing for criminal litigation regarding driving-while-intoxicated cases. Based on your representations and our review, we find the information at issue was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. We therefore conclude the district attorney may withhold the responsive information you have indicated under section 552.108(b)(3) of the Government Code.²

You also seek to withhold a cellular telephone number of a peace officer under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov't Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers

²As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

assigned to county officials and employees with specific law enforcement responsibilities.” Open Records Decision No. 506 at 2 (1988). We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You inform us the cellular telephone number you have marked is assigned to a peace officer with the Galveston Police Department and is assigned to the officer in the field to carry out his law enforcement responsibilities. You state the cellular telephone number is displayed within internal records maintained by the district attorney and was given to the district attorney to provide immediate access to the officer by prosecutors in the event quick communication was necessary regarding organizing and carrying out the no-refusal weekend and helping ensure the admissibility of evidence. You assert the release of this information would interfere with law enforcement. Based on your representations and our review of the information at issue, we conclude the district attorney may withhold the cellular telephone number you have marked under section 552.108(b)(1) of the Government Code.³

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* 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)(1)). Section 552.117 encompasses a cellular telephone number, 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 a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. You state, and provide documentation demonstrating, the personal cellular telephone numbers you have marked under section 552.117 belong to employees and officials who have elected to keep such information confidential under section 552.024. Based on your representations and our review, we find the district attorney must withhold the cellular telephone numbers you have marked under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Upon review, we

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

find the district attorney must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner consents to disclosure.⁴

In summary, the district attorney may withhold the responsive information you have indicated under section 552.108(b)(3) of the Government Code. The district attorney may withhold the cellular telephone number you have marked under section 552.108(b)(1) of the Government Code. The district attorney must withhold the cellular telephone numbers you have marked under section 552.117(a)(1) of the Government Code. The district attorney must withhold the e-mail address you 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, 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 437219

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information, including e-mail addresses of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.