



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2012

Ms. Maureen E. Ray  
Special Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711

OR2012-17500

Dear Ms. Ray:

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# 469825.

The State Bar of Texas (the "state bar") received a request for eighteen categories of information including: certain information pertaining to District 4 of the state bar; certain rules of procedure adopted during a specified time period by the state bar; ten specified policies and procedures regarding disciplinary procedures and investigations; agendas and minutes of meetings of the District 4 Grievance Committee, including the names of District 4 Grievance Committee chairmen; District 4 Grievance Committee member names; names of District 4 Grievance Committee members who have been recused and/or disqualified for a specified time period; information pertaining to two specified disciplinary counsel positions; copies of all advertisements for certain employment opportunities in the Houston Office of Disciplinary Counsel for a specified time period; and certain policies and procedures pertaining to volunteers. You state the state bar has released some information to the requestor. You also explain the state bar does not possess information responsive to certain portions of the request.<sup>1</sup> You claim some of the requested information is subject to

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

section 552.027 of the Government Code. You also claim the submitted information is not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit written comments regarding why information should or should not be released).

You contend the state bar is not required to provide the requested advertisements for certain employment opportunities in the Houston Office of Disciplinary Counsel because this information is commercially available. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

*Id.* § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. You state the requested information at issue is commercially available. However, you have not submitted any responsive advertisements for this portion of the request. *See id.* §§ 552.301, .302. Furthermore, you do not inform us that any responsive advertisements are contained in a commercial book or publication that was purchased or acquired for research purposes. *Id.* 552.027(a). As such, the state bar must release any responsive advertisements for certain employment opportunities in the Houston Office of Disciplinary Counsel.

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<sup>2</sup>We assume the "representative sample" of information 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 those submitted to this office.

We next address your contention that the submitted information is not subject to the Act. The Act is applicable to "public information." *See id.* § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

You contend the submitted information consists of records that were created, are maintained, or are held by the Chief Disciplinary Counsel ("CDC") on behalf of the Commission for Lawyer Discipline ("CFLD"), and thus, pursuant to rule 4.09 of the Texas Rules of Disciplinary Procedure, the submitted information is not subject to the Act.

You state:

Rule 5.01 of the Texas Rules of Disciplinary Procedure ("TRDP") provides that the General Counsel of the State Bar serves as the [CDC]; the rule also provides, however, that if the CFLD determines that the General Counsel should no longer serve as the CDC, it shall so notify the Board of Directors of the State Bar and, in the next succeeding fiscal year, the State Bar shall provide adequate funds to the CFLD sufficient for it to select and hire a lawyer as CDC and sufficient deputies and assistants as may be required to operate the disciplinary and disability system efficiently and effectively. In such event, Rule 5.01 states that the CFLD "alone shall possess the right of selection." Further, TRDP Rule 5.03 provides that, in disciplinary and disability matters, the CDC is accountable only to the CFLD.

In fiscal year 1999-2000, the CFLD elected this option and selected a CDC separate from the State Bar's General Counsel. This structure has remained in place to the present. Under this structure, the CDC's purview is the attorney disciplinary system, while the State Bar's General Counsel serves as administrative counsel to the State Bar and its leadership. The duties of the CDC under this structure are delineated in TRDP Rule 5.02. While some of the CDC's records eventually become State Bar records subject to the Act, such as its submission to the State Bar of a proposed budget, the vast majority

of its records are generated in its work serving as the CFLD's attorney, administering the attorney discipline and disability system for the CFLD, and performing "such other duties relating to disciplinary and disability matters as may be assigned by the Commission [CFLD]." [Tex. R. Disciplinary P.] 5.02(M).

Rule 4.09 of the Texas Rules of Disciplinary Procedure provides as follows:

The [CFLD] is not a "governmental body" as that term is defined in Section 551.001(3) of V.T.C.A., Government Code, and is not subject to either the provisions of the Open Meetings Act or the Open Records Act.

Tex. R. Disciplinary P. 4.09. You inform us the submitted information consists of information relating to the workings of the disciplinary system and the CDC. We understand you to represent that the submitted information was created and is maintained by the CDC on behalf of the CFLD. Based on your representations and our review, we agree the submitted information is held by the CDC on behalf of the CFLD. Accordingly, we find these records are records of the CFLD for purposes of rule 4.09 of the Texas Rules of Disciplinary Procedure. Therefore, pursuant to rule 4.09 of the Texas Rules of Disciplinary Procedure, we conclude the submitted information is not subject to the Act and need not be released in response to this request. Accordingly, we need not address your remaining argument against disclosure.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

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Ref: ID# 469825

Enc. Submitted documents

c: Requestor  
(w/o enclosures)