



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2013

Mr. Scott A. Durfee
Assistant General Counsel
Harris County District Attorney's Office
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2013-07686

Dear Mr. Durfee:

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# 486847.

The Harris County District Attorney's Office (the "district attorney's office") received a request for e-mail communications between named individuals. You claim a portion of the requested information is not subject to the Act. You claim the other portion of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we address your claim that a portion of the requested information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹We 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.

- (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.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

You state the information at issue in Exhibit B-3 relates to e-mail communications between employees of the district attorney's office which are entirely personal in nature. You state the communications at issue were not made by the district attorney's office's employees in their official capacity and do not relate to official district attorney's office business. After reviewing this information, we agree the information at issue in Exhibit B-3 does not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the town. *See* Gov't Code § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, the information at issue in Exhibit B-3 is not subject to the Act, and the district attorney's office need not release it in response to this request.

Section 552.108 of the Government Code provides in relevant 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) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information at issue reflects the mental impressions and legal reasoning of attorneys representing the State of Texas, and the documents were also prepared in the course of preparing for criminal

litigation. Based on your representations and our review, we find the district attorney's office has demonstrated the applicability of section 552.108(a)(4) to the remaining information at issue. Therefore, the remaining information at issue may be withheld under section 552.108(a)(4) of the Government Code.²

In summary, the information at issue in Exhibit B-3 is not subject to the Act and the district attorney's office need not release this information in response to the present request. The district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 486847

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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