



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2014

Ms. Holly C. Lytle
Assistant County Attorney
County of El Paso
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2014-19228

Dear Ms. Lytle:

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# 540710 (File No. OP-14-414).

The El Paso County District Attorney's Office (the "district attorney's office") received three requests from the same requestor for information from a named individual's e-mails, computer, cell phone, or other device regarding specified topics, as well as the named individual's oath of office, scope of office, bond, and copies of the last 25 indictments the named individual has issued or prosecuted. You state the district attorney's office will release some information to the requestor. Additionally, you state the district attorney's office does not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code and privileged under article 39.14 of the Code of Criminal Procedure.²

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. 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).

²Although you also raise section 552.101 of the Government Code in conjunction with article 39.14 of the Texas Code of Criminal Procedure and Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision No. 676 at 1-2 (2002). Additionally, although you raise Texas Rule of Civil Procedure 192.5, we note the proper exception to raise when asserting the attorney work product privilege for information not subject to section 552.022 of the Government Code is section 552.111 of the Government Code. See Open Records Decision Nos. 677 (2002), 676 at 1-2.

We have considered the submitted arguments and reviewed the submitted information. We also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments to this office stating why information should or should not be released).

Initially, you state the first two requests for information were not valid requests for purposes of the Act. You state the first request was submitted by e-mail to a county judge and copied to an assistant district attorney and the second request was submitted by e-mail to the same assistant district attorney. Section 552.301(c) of the Government Code provides that “a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.” *Id.* § 552.301(c). You state neither of the individuals who received the first two requests is the district attorney’s office’s public information officer or a person designated by the public information officer to receive a request submitted by e-mail. Nevertheless, you explain the requestor sent the same request a third time to the district attorney’s office’s public information officer. Furthermore, you have requested a decision on the submitted information and otherwise treated the instant requests as having been properly submitted. Accordingly, we will determine whether the information at issue is excepted from disclosure.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the submitted information relates to a pending criminal prosecution. Based on this representation, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the district attorney’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code.³

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.texasattorneygeneral.gov/open/>

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristi L. Godden". The signature is fluid and cursive, with the first name "Kristi" being more prominent than the last name "Godden".

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 540710

Enc. Submitted documents

c: Requestor
(w/o enclosures)