



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 8, 2016

Mr. John T. Hubert  
District Attorney  
Kleberg County  
P.O. Box 1471  
Kingsville, Texas 78364

OR2016-05345

Dear Mr. Hubert:

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# 600707.

The Kleberg County District Attorney's Office (the "district attorney's office") received a request for four categories of information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a notice and agenda of a public meeting. The notices and agendas of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See Gov't Code §§ 551.041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting).* Although you seek to withhold this information under sections 552.103 and 552.108 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).* Accordingly, the district attorney's office must release the

notice and agenda of a public meeting, which we have marked, pursuant to chapter 551 of the Government Code.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The remaining information contains information in invoices, purchase orders, or receipts that is subject to subsection 552.022(a)(3), which must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(3) under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the information at issue may not be withheld under section 552.103 or section 552.108 of the Government Code. However, as section 552.137 of the Government Code can make information confidential, we will consider the applicability of section 552.137 to the information at issue.<sup>1</sup> Further, we will consider your arguments against disclosure of the remaining information.

Section 552.108(a)(1) 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 . . . 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 this exception

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation showing, the remaining information relates to a pending criminal investigation. Based upon your representation, we conclude release of the remaining 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 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district attorney's office must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the district attorney's office must release the notice and agenda of a public meeting, which we have marked, pursuant to chapter 551 of the Government Code. The district attorney's office must release Attachment D, and the additional information we have marked, pursuant to section 552.022(a)(3) of the Government Code. The district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the information subject to section 552.022(a)(3) of the Government Code, the district attorney's office must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public 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.

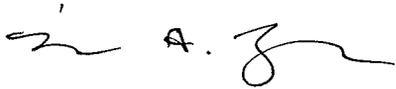
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

---

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

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 'N. A. Ybarra', with a stylized flourish at the end.

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bw

Ref: ID# 600707

Enc. Submitted documents

c: Requestor  
(w/o enclosures)