



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 12, 2016

Ms. Lacey B. Lucas  
Assistant District Attorney  
County of Dallas  
411 Elm Street, 5<sup>th</sup> Floor  
Dallas, Texas 75202-3317

OR2016-18274

Dear Ms. Lucas:

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# 622310.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for all e-mails sent to or from the secretary of a named individual since a specific date. The district attorney's office claims some of the submitted information is not subject to the Act. Additionally, the district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and

rule 192.5 of the Texas Rules of Civil Procedure.<sup>1</sup> We have considered the claimed arguments and reviewed the submitted representative sample of information.<sup>2</sup>

We note the Act is applicable only to “public information.” *See* Gov’t Code §§ 552.002, .021. Section 552.002(a) defines “public information” as

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

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

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<sup>1</sup>Although the district attorney’s office raises section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Additionally, although the district attorney’s office raises section 552.103 of the Government Code, the district attorney’s office makes no arguments to support this exception. Therefore, we assume the district attorney’s office has withdrawn its claim this section applies to the submitted information. *See* Gov’t Code §§ 552.301, .302.

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

(a-2) The definition of “public information” provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

*Id.* § 552.002(a)-(a-2). Thus, virtually all the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *Id.*; *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The district attorney’s office asserts Exhibit D consists of e-mails that are purely personal in nature. The district attorney’s office further states the information was not collected, assembled, or maintained regarding the transaction of official district attorney’s office business. Based on these representations and our review, we find the information at issue does not constitute public information for purposes of the Act. Gov’t Code § 552.002; *see also* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving no or *de minimis* use of state resources). Therefore, Exhibit D is not subject to the Act, and the district attorney’s office is not required to release it in response to this request.<sup>3</sup>

Next, we note Exhibit B includes copies of agendas of public meetings of the Dallas County Commissioners Court. Agendas of a governmental body’s public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See* Gov’t Code § 551.043 (notice of meeting of governmental body must be posted in a place readily accessible to general public at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act, such as sections 552.107 and 552.111, do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the copies of agendas of the public meetings must be released pursuant to section 551.022 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:

...

(17) information that is also contained in a public court record[.]

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<sup>3</sup>As we are able to make this determination, we need not address the district attorney’s office’s remaining arguments against disclosure of this information.

Gov't Code § 552.022(a)(17). The remaining information contains court-filed documents subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* The district attorney's office seeks to withhold this information under sections 552.107 and 552.111 of the Government Code. However, these sections are discretionary exceptions and do not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived). Therefore, the information at issue may not be withheld under these exceptions. However, the Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure are "other law" that make information expressly confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider the district attorney's office's arguments under rule 503 of the Texas Rules of Evidence, and rule 192.5 of the Texas Rules of Civil Procedure for the information subject to section 552.022 of the Government Code. We will also consider the arguments against disclosure of the information not subject to section 552.022.

Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

- (A) between the client or the client's representative and the client's lawyer or the lawyer's representative;
- (B) between the client's lawyer and the lawyer's representative;
- (C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;
- (D) between the client's representatives or between the client and the client's representative; or
- (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

The district attorney’s office asserts the information subject to section 552.022 of the Government Code consists of communications between district attorney’s office attorneys and staff. The district attorney’s office states the communications were made for the purpose of facilitating the rendition of professional legal services to the district attorney’s office. The district attorney’s office further states the communications were intended to be confidential and have remained confidential. Based on these representations and our review, we find the district attorney’s office has demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the district attorney’s office may withhold the information subject to section 552.022 under rule 503 of the Texas Rules of Evidence.<sup>4</sup>

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov’t Code § 552.107(1). The elements of the privilege under section 552.107(1) are the same as those discussed above for rule 503. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. ORD 676 at 6-7. Section 552.107(1) generally excepts from disclosure an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie*, 922 S.W.2d at 923.

The district attorney’s office claims the remaining information in Exhibit B is excepted from disclosure under section 552.107(1) of the Government Code. The district attorney’s office

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<sup>4</sup>As our ruling is dispositive, we need not address the district attorney’s office’s remaining arguments against disclosure of this information.

states the information at issue consists of communications between district attorney's office attorneys and staff. The district attorney's office states the communications were made for the purpose of facilitating the rendition of professional legal services to the district attorney's office. The district attorney's office further states the communications were intended to be confidential and have remained confidential. Based on these representations and our review, we find the district attorney's office has demonstrated the applicability of the attorney-client privilege to the information at issue. Therefore, the district attorney's office may withhold the remaining information in Exhibit B under section 552.107(1) of the Government Code.<sup>5</sup>

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 explain how and why the release of the requested information 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 (Tex. 1977). The district attorney's office states Exhibit C relates to pending criminal investigations and prosecutions and release of the information would interfere with those investigations and prosecutions. *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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable. Accordingly, the district attorney's office may withhold Exhibit C under section 552.108(a)(1) of the Government Code.<sup>6</sup>

In summary, Exhibit D is not subject to the Act, and the district attorney's office is not required to release it in response to this request. The copies of agendas of the public meetings must be released pursuant to section 551.022 of the Government Code. The district attorney's office may withhold the information subject to section 552.022 under rule 503 of the Texas Rules of Evidence. The district attorney's office may withhold the remaining information in Exhibit B under section 552.107(1) of the Government Code. The district attorney's office may withhold Exhibit C under section 552.108(a)(1) 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.

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<sup>5</sup>As our ruling is dispositive, we need not address the district attorney's office's remaining arguments against disclosure of this information.

<sup>6</sup>As our ruling is dispositive, we need not address the district attorney's office's remaining arguments against disclosure of this information.

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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 622310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)