



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2017

Mr. Robert S. Davis
Counsel for the County of Wood
Flowers Davis, P.L.L.C.
1021 ESE Loop, Suite 200
Tyler, Texas 75701

OR2017-21025

Dear Mr. Davis:

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# 675446.

The Wood County District Attorney's Office (the "district attorney's office"), which you represent, received a request for communications and correspondence between named individuals mentioning or related to two named individuals during a specified period of time. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.108, 552.117, 552.1175, and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

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.

(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). You contend the submitted information contains messages that are purely personal in nature. You further state the information at issue was not written, produced, collected, assembled, or maintained regarding the transaction of official business of the district attorney's office. Based on your representations and our review, we find the information we have marked does not constitute public information for purposes of the Act.¹ 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, the information we have marked is not subject to the Act, and the district attorney's office is not required to release it in response to this request.² However, we find the remaining information relates to the transaction of the official business of a public employee or official. Thus, we find the remaining information is subject to the Act and the district attorney's office must release it unless the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

²As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

You also contend the remaining information constitutes records of the judiciary. While the Act's definition of a "governmental body" is broad, it specifically excludes the judiciary. *See id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). Upon review, we find you have failed to demonstrate the remaining information consists of judicial records maintained by the district attorney's office on behalf of the judiciary. Therefore, this information is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

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). You state the remaining information is related to a pending investigation and prosecution. You further state the district attorney's office objects to disclosure of the information at issue because its release would interfere with the investigation and prosecution. Based on the submitted representations, we conclude the release of the information at issue 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). Thus, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the information we have marked is not subject to the Act, and the district attorney's office is not required to release it in response to this request. The district attorney's office may withhold the remaining information 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.

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

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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 675446

Enc. Submitted documents

c: Requestor
(w/o enclosures)