



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 30, 2019

Ms. Elizabeth Stevens
Assistant District Attorney
Harris County District Attorney's Office
500 Jefferson, Suite 600
Houston, Texas 77002

OR2019-11372

Dear Ms. Stevens:

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# 762869.

The Harris County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for correspondence involving named and specified individuals for a specified time period. You claim some of the submitted information is not subject to the Act and some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your submitted arguments and reviewed the submitted representative sample of information.¹

You contend Appendix D is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as the following:

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

[I]formation 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.

Id. § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You assert this information pertains to purely personal matters and is unrelated to official business of the district attorney's office. Based on your representations and our review of the information, we agree the information at issue is not public information for the purposes of section 552.002, and thus, is not subject to disclosure under the Act. *See* 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 district attorney's office need not release Appendix D in response to these requests for information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information in Appendix C pertains to criminal cases that concluded in results other than convictions or

deferred adjudications. Based on your representation, we agree section 552.108(a)(2) is applicable and the district attorney's office may withhold Appendix C on that basis.

In summary, pursuant to section 552.002 of the Government Code, Appendix D is not public information for the purposes of the Act and the district attorney's office need not release it in response to these requests for information. The district attorney's office may withhold Appendix C under section 552.108(a)(2) 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.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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/eb

Ref: ID# 762869

Enc. Submitted documents

c: Requestor
(w/o enclosures)