



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 19, 2019

Ms. Debbie R. Harrison  
Assistant District Attorney  
Collin County District Attorneys Office  
2100 Bloomdale Road, Suite 100  
McKinney, Texas 75071

OR2019-26292

Dear Ms. Harrison:

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# 786816.

Collin County (the "county") received four requests from the same requestor for e-mail communications between named individuals including certain key words during a defined period of time.<sup>1</sup> You state some of the submitted information is not subject to the Act or subject to section 552.027. Additionally, you claim the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.111, and 552.1325 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you contend some of the submitted information constitutes records of the judiciary. The Act generally requires the public disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.002(a)(1). 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

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<sup>1</sup>We note the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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 any portion of the submitted information consists of judicial records maintained by the county solely 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. Accordingly, we will consider your remaining arguments against disclosure of the submitted information.

Section 552.027 of the Government Code provides, in relevant part:

- (a) A governmental body is not required under [the Act] to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

Gov't Code § 552.027(a). Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The county states the information it marked is commercially available. In this instance, however, the requestor has not requested a particular commercially available publication, but rather the requestor seeks specified communications. The fact that commercially available research materials happen to be responsive to the request does not, in our view, bring such materials within the ambit of section 552.027. Accordingly, due to the nature of the request, we determine the information the county indicated is not subject to section 552.027 of the Government Code, and must be released unless it falls within an exception to disclosure. *See id.* §§ 552.006, .021, .301, .302.

We note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless it is “made confidential under [the Act] or other law[.]” *Id.* § 552.022(a)(17). Although you seek to withhold this information, which we marked, under sections 552.103, 552.108, and 552.111 of the Government Code, these sections 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); Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such sections 552.103, 552.108, and 552.111 do not make information confidential for the purposes of section 552.022. Accordingly, the marked court-filed documents may not be withheld under section 552.103, section 552.108, or section 552.111. Further, the attorney work product privilege, which is encompassed by section 552.111, is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to “actions of a civil

nature.” See Tex. R. Civ. P. 2. Thus, because the information at issue relates to criminal cases, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply, and this information may not be withheld on that basis. However, you also raise section 552.1325, which makes information confidential under the Act. Therefore, we will address the applicability of section 552.1325 to the information subject to section 552.022(a)(17). We will also address your arguments under sections 552.103, 552.108, and 552.111 for the remaining information not subject to section 552.022.

Section 552.108 of the Government Code provides, in relevant part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(1), (a)(4), (b)(1), (b)(3). A governmental body raising section 552.108 must explain the applicability of that section. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state some of the remaining information was prepared by an attorney representing the state, and it was created in anticipation of criminal litigation. Based on these representations and our review, we conclude the county may withhold the information at issue, which we marked, under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>2</sup>

You also argue some of the remaining information not subject to section 552.022(a)(17) of the Government Code is excepted from disclosure under section 552.108(a)(1) of the Government Code. A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to a pending criminal prosecution and that release of this information would interfere with the pending prosecution. Based upon your representations and our review, 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 77 (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. 976). Thus, section 552.108(a)(1) of the Government Code is applicable to the information at issue. Accordingly, the county may withhold the remaining information you indicated not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.1325 of the Government Code provides:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

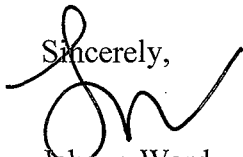
Gov't Code § 552.1325. Upon review, we find none of the remaining information consists of a victim impact statement or information submitted for the purposes of preparing a victim impact statement as defined by article 56.03 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 56.03. Accordingly, none of the remaining information is subject to section 552.1325 of the Government Code and the county may not withhold it on that basis.

In summary, the county may withhold the information we marked under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The county may withhold the remaining information you indicated not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code. The county must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/gw

Ref: ID# 786816

Enc. Submitted documents

c: Requestor  
(w/o enclosures)