



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 11, 2019

Ms. Elizabeth Stevens  
Assistant General Counsel  
Harris County  
500 Jefferson Street, Suite 600  
Houston, Texas 77002

OR2019-28732

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# 789636.

The Harris County District Attorney's Office (the "district attorney's office") received a request for e-mails sent to or from a named individual for a specified time period, excluding e-mails regarding training, and all contracts Harris County has with the named individual.<sup>1</sup> You state the district attorney's office released the requested contracts. You claim some information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.108, 552.117, 552.137, and 552.152 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> The district attorney's office provides documentation showing it 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<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.

Initially, you argue the information submitted as Appendix D consists of information that is not subject to the Act. The Act applies to “public information,” which is defined in section 552.002 of the Government Code as:

(a) . . . 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; or

(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 pertain to official business of the governmental body.

Gov’t Code § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987). Information is “in connection with the transaction of official business” if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov’t Code § 552.002(a-1). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov’t Code § 552.001(a).

You assert Appendix D consists of purely personal communications and indicate this information does not constitute public information because the nature of these

communications do not pertain to the transaction of the district attorney's office official business. Further, you indicate the use of district attorney's office resources to create the information at issue was *de minimis*. Based upon your representations and our review, we find Appendix D does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the district attorney's office. *See id.* § 552.002. Therefore, we conclude this information does not constitute public information for purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 7 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Accordingly, the district attorney's office is not required to release Appendix D in response to this request for information.<sup>3</sup>

Section 552.108 of the Government Code states, 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:

...

(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 required public disclosure] if:

...

(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

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<sup>3</sup> As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

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

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108(a)(4) or section 552.108(b)(3) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A). You state Appendix E consists of trial strategy and similar information about pending cases that reflect the mental impressions or legal reasoning of attorneys representing the state. Upon review, we agree Appendix E reflects the mental processes or legal reasoning of an attorney representing the state and thus subject to subsections 552.108(a)(4) and (b)(3) of the Government Code. Accordingly, the district attorney's office may withhold Appendix E under subsections 552.108(a)(4) and (b)(3) of the Government Code.<sup>4</sup>

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *Id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming 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(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.,* Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You argue release of some information in Appendix F would present a substantial risk to the safety of employees of the district attorney's office. You further argue release of the remaining information in Appendix F would allow a person with intent to do harm to interfere with law enforcement. Based on your representations and our review, we agree the release of the information we marked in Appendix F would interfere with law enforcement. Accordingly, the district attorney's office may withhold the information we

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

marked in Appendix F under section 552.108(b)(1) of the Government Code.<sup>5</sup> However, you failed to demonstrate any of the remaining information in Appendix F is excepted from disclosure under section 552.108(b)(1) of the Government Code, and you may not withhold it on that basis.

Section 552.152 of the Government Code provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. Upon review, we find you have not demonstrated the release of any of the remaining information in Appendix F would subject an employee of the district attorney's office to a substantial threat of physical harm. Thus, the district attorney's office may not withhold any of the remaining information in Appendix F under section 552.152 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You state the individuals at issue elected to withhold their information. Therefore, the district attorney's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a government body does not pay for the cellular telephone service.

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)-

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

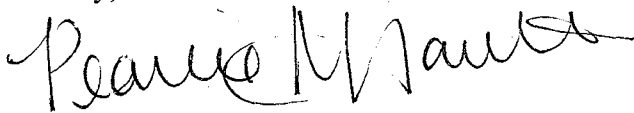
(c). The e-mail addresses we marked are not excluded by subsection (c). Therefore, the district attorney's office must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.

In summary, the e-mails in Appendix D do not constitute public information under section 552.002 of the Government Code and the district attorney's office is not required to release them to the requestor. The district attorney's office may withhold (1) Appendix E under subsections 552.108(a)(4) and (b)(3) of the Government Code; and (2) the information we marked in Appendix F under section 552.108(b)(1) of the Government Code. The district attorney's office must withhold information we marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The district attorney's office must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The remaining information must be released.

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,



Pearlie Gault  
Attorney  
Open Records Division

PG/eb

Ref: ID# 789636

Enc. Submitted documents

c: Requestor  
(w/o enclosures)