



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 24, 2020

Ms. Elizabeth Stevens
Assistant General Counsel
Harris County
1310 Prairie, 5th Floor
Houston, Texas 77002

OR2020-29389

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# 854285 (ORR# 2020.09-0019 & 2020.09-0022).

The Harris County District Attorney's Office (the "district attorney's office") received two requests from different requestors for all letters of resignation sent by employees of the district attorney's office during specified time periods. The second requestor additionally seeks exit interviews of all district attorney's office employees during a specified time period. The district attorney's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.137 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the second requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.108 of the Government Code provides in part:

- (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 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.

...

(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.

Gov't Code § 552.108(a)(4). A governmental body must explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney's office asserts the information submitted as Attachment C consists of records that were prepared by attorneys who represent the state and contains the mental impressions or legal reasoning of these attorneys created in anticipation or in the course of preparing for criminal trial. Based on the district attorney's office's representations and our review, we agree subsection 552.108(a)(4) of the Government Code is applicable to some of the information at issue, which we marked. Accordingly, the district attorney's office may withhold the information we marked in Attachment C under section 552.108(a)(4) of the Government Code.² However, the district attorney's office has not demonstrated the applicability of section 552.108(a)(4) to any of the remaining information at issue, and the district attorney's office may not withhold any of the remaining information on that basis.

The district attorney's office also asserts the remainder of Attachment C is excepted under section 552.108 of the Government Code, which also provides 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 the requirements of Section 552.021 if:

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

(2) 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)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should

² As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

apply to information requested), .108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney's office has not demonstrated the remaining information at issue pertains to a specific ongoing criminal investigation or prosecution, nor has the district attorney's office explained release of the remaining information would interfere in some way with the detection, investigation, or prosecution of crime. Thus, the district attorney's office has failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1) to the remaining information at issue, and the district attorney's office may not withhold any of the remaining information on that basis.

Section 552.117(a)(13) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters, regardless of whether the current or former attorney complies with Section 552.024 or 552.1175 of the Government Code. *See Gov't Code* § 552.117(a)(13). We have marked information under section 552.117 that consists of the personal information of employees of the district attorney's office and the information is held in the employment context. Accordingly, the district attorney's office must withhold the information we marked under section 552.117(a)(13) of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Gov't Code* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, a portion of the information the district attorney's office seeks to withhold on this basis relates to an individual whose identity is protected under section 552.117 of the Government Code, and thus the individual's privacy interest is adequately protected. Further, we find the district attorney's office has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the district attorney's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore,

the district attorney's office must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. However, the remaining e-mail addresses the district attorney's office seeks to withhold is excluded by subsection 552.137(c). Accordingly, the district attorney's office may not withhold the remaining e-mail address under section 552.137 of the Government Code.

In summary, the district attorney's office may withhold the information we marked in Attachment C under section 552.108(a)(4) of the Government Code. The district attorney's office must withhold the information we marked under section 552.117(a)(13) of the Government Code. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district attorney's office 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 854285

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)