



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2022

Ms. Rene Flores
Assistant District Attorney
34th Judicial District
500 East San Antonio Street, 2nd Floor
El Paso, Texas 79901-2420

OR2022-33347

Dear Ms. Flores:

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# 980995 (File No. 22-0046).

The El Paso District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified list and specified communications.¹ You state you have released some information. You state the district attorney's office does not maintain information responsive to a portion of the request.² You claim some of the submitted information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the

¹ The district attorney's office states 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).

² The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.107(2) of the Government Code allows a governmental body to withhold information if “a court by order has prohibited disclosure of the information.” *Id.* § 552.107(2). You submitted a copy of a court order signed by Judge Sam Medrano, Jr., District Judge for the 409th District Court in El Paso County, Texas, in a case styled *The State of Texas v. Patrick Wood Crusius*. The court order provides, in part, from the date the order was issued until the discharge of the trial jurors in the case, all attorneys involved in the case shall not make “extrajudicial statements . . . if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding.” The order further prohibits “attorneys, their staffs, and law enforcement officers involved in this case” from discussing the case with the media. You assert the gag order prevents disclosure of a portion of the submitted information. We note, however, the gag order forbids statements by certain individuals but does not prohibit disclosure of any information. Thus, upon review, we conclude you failed to establish the gag order makes the information at issue confidential or prohibits the district attorney’s office from releasing any of the submitted information. Therefore, we find the district attorney’s office may not withhold any portion of the submitted information under section 552.107(2) of the Government Code.

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). Therefore, the district attorney’s office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. However, we find the remaining information at issue contains e-mail addresses that are specifically excluded by section 552.137(c). *See id.* 552.137(c). Thus, the district attorney’s office may not withhold any of the remaining information under section 552.137 of the Government Code. As you raise no further exceptions to disclosure, 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,

Colin Henry
Attorney
Open Records Division

CEH/pt

Ref: ID# 980995

Enc. Submitted documents

c: Requestor
(w/o enclosures)