



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2016

Ms. Ann-Marie Sheely  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR2016-25600

Dear Ms. Sheely:

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# 634621.

The Travis County District Attorney's Office (the "attorney's office") received three requests from two requestors for information relating to DNA evidence and testing. The first requestor seeks copies of all notifications sent to defendants regarding DNA mixtures and a spreadsheet or listing of all identified cases that might be affected by a re-calculation of DNA mixtures. The second requestor seeks a list of all individuals who requested DNA recalculation in response to the attorney's office's notifications. You state you are releasing some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108 of the Government Code states, in pertinent part, the following:

---

<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(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.

Gov't Code § 552.108(a)(4). A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also* Open Records Decision No. 434 at 2-3 (1986). You state the submitted spreadsheets were compiled and generated by the attorney's office for the purpose of investigating and prosecuting cases potentially affected by recent scientific developments related to the evaluation of DNA mixtures or the use of the Federal Bureau of Investigation's DNA database. You assert this information was prepared in anticipation of criminal litigation resulting from the DNA affected cases. You further state the spreadsheets include notes reflecting the attorney's office's legal reasoning and prosecution strategies. You also assert the submitted notices were prepared by prosecutors in anticipation of litigation with regard to the affected DNA cases. Upon review, we agree the submitted information was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or reflects the mental impressions or legal reasoning of attorneys representing the state. Accordingly, the attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code.<sup>2</sup>

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/>

---

<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments.

[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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/eb

Ref: ID# 634621

Enc. Submitted documents

c: Requestor  
(w/o enclosures)