



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2017

Ms. Amber Bewley
Assistant County Attorney
Houston County Attorney's Office
401 East Houston Avenue, 2nd Floor
Crockett, Texas 75835

OR2017-03813

Dear Ms. Bewley:

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# 646645.

The Houston County Attorney's Office (the "county attorney's office") received a request for all investigative materials pertaining to a specified case.¹ You state you have released some information. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. You also state, and provide documentation showing, you notified third parties of the request for information and of their rights to submit arguments to this office as to why some of the submitted information should not be released. *See Gov't Code* §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

¹You state you 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).

Section 552.108 of the Government Code states, in pertinent 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.

Gov't Code § 552.108(a)(4). A governmental body claiming an exception to disclosure under subsection 552.108(a)(4) must explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). You argue Exhibits A, B, and C consist of internal notations or records prepared by an attorney representing the state in anticipation of litigation or consist of the mental impressions or legal reasoning of an attorney representing the state in anticipation of litigation. Based on your representations and our review, we agree subsection 552.108(a)(4) is applicable to the information in Exhibits A, B, and C. Accordingly, the county attorney's office may withhold Exhibits A, B, and C under subsection 552.108(a)(4) of the Government Code.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from the third parties. Thus, these third parties have not demonstrated they have protected proprietary interests in any of the remaining information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county attorney's office may not withhold any portion of the remaining information on the basis of any proprietary interests any of the third parties may have in the information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is

excepted from public release. Gov't Code § 552.130. Upon review, we find the county attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the county attorney's office may withhold Exhibits A, B, and C under subsection 552.108(a)(4) of the Government Code. The county attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The county 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 http://www.texasattorneygeneral.gov/open/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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/sb

Ref: ID# 646645

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)