



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2017

Ms. Carah-Beth Bass
Counsel for Colorado County
Allison, Bass & Magee, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2017-08655

Dear Ms. Bass:

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# 654402.

The Colorado County Attorney's Office (the "county attorney's office"), which you represent, received a request for records detailing an appointment of an attorney pro tem, and the names of the grand jurors who heard a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portion of the request seeking the names of the grand jurors who heard the specified case. To the extent any information responsive to this portion of the request existed on the date the county attorney's office received the request, we assume the county attorney's office has released it. If the county attorney's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). You seek to withhold this

information under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code. However, sections 552.103, 552.107, 552.108, and 552.111 are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the county attorney's office may not withhold the court-filed documents under section 552.103, section 552.107, section 552.108, or section 552.111. As no other exceptions to disclosure are raised, the court-filed documents we have indicated must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will consider your arguments for the remaining information not subject to section 552.022.

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.

(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

(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 argue the remaining information consists of internal notations or records prepared by an attorney representing the state or consists of the mental impressions or legal reasoning of an attorney representing the state. Based on your representations and our review, we agree section 552.108(a)(4) and section 552.108(b)(3) are applicable to the information at issue. Accordingly, the county attorney's office may withhold the remaining information under section 552.108(a)(4) and section 552.108(b)(3) of the Government Code.¹

In summary, the county attorney's office must release the court-filed documents we indicated pursuant to section 552.022(a)(17) of the Government Code. The county attorney's office may withhold the remaining information under section 552.108(a)(4) and section 552.108(b)(3) of the Government Code.

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/eb

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 654402

Enc. Submitted documents

c: Requestor
(w/o enclosures)