



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2017

Mr. William Schultz
Assistant District Attorney
Civil Division
County of Denton Criminal District Attorney's Office
1450 East McKinney, Suite 3100
Denton, Texas 76209

OR2017-09427

Dear Mr. Schultz:

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# 656264 (PIR# 17-030 and 17-039).

The Denton County Criminal District Attorney's Office (the "district attorney's office") received two identical requests from different requestors for three categories of information relating to the Brady List maintained by the district attorney's office. The district attorney's office states it does not have information responsive to a portion of the request.¹ The district attorney's office states it has released 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.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

Initially, the district attorney's office states a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-05734 (2017). In Open Records Letter No. 2017-05734, we concluded the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the district attorney's office may continue to rely on Open Records Letter No. 2017-05734 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information is not identical to the information at issue in Open Records Letter No. 2017-05734, we will address your arguments against its disclosure.

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:

...

(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). You state the submitted information reflects the mental impressions and legal reasoning of attorneys representing the state. You also state this information was created by attorneys for the district attorney's office and reflects the mental impressions or legal reasoning of attorneys representing the state concerning whether to call police officers as witnesses in criminal cases. Upon review, we find the district attorney's office has demonstrated the applicability of section 552.108(a)(4)


of the Government Code to the submitted information. Accordingly, we find the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code.³

In summary, the district attorney's office may continue to rely on Open Records Letter No. 2017-05734 as a previous determination and withhold the identical information in accordance with that ruling. The district attorney's office may withhold the submitted information under section 552.108(a)(4) 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 656264

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³As our ruling is dispositive, we do not address your remaining argument against disclosure of the submitted information.