



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2017

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

OR2017-20403

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# 674555.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. You claim some of the submitted information is not subject to the Act. You claim the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, you inform us some of the submitted information consists of a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not

¹We 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.

subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). You state the information at issue is only held by the district attorney's office acting as an agent of the grand jury and is in the constructive possession of the grand jury. Accordingly, we find the information you marked consists of records of the judiciary that are not subject to release under the Act, and the district attorney's office need not release this information in response to this request.

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.

(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). You argue the remaining information was created or assembled in anticipation of or in the course of preparing for criminal litigation and reflects the mental impressions and legal reasoning of prosecutors in the district attorney's office. Upon review, we find you have demonstrated the information at issue was prepared by an

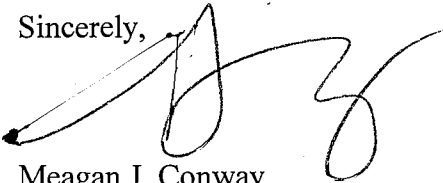
attorney representing the state in the course of preparing for criminal litigation and reflects the mental impressions and legal reasoning of the attorney. Accordingly, the district attorney's office may withhold the remaining information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

In summary, the information you marked consists of judicial records not subject to the Act and the district attorney's office need not release it in response to this request. The district attorney's office may withhold the remaining information under subsections 552.108(a)(4) and 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 674555

Enc. Submitted documents

c: Requestor
(w/o enclosures)