



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2017

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

OR2017-24732

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# 682335 (TCAO Doc. ID# 524966-1).

The Travis County Attorney's Office (the "county attorney's office") received a request for information pertaining to each allegation of an election code violation referred to the county attorney's office during a specified time period. The county attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

The county attorney's office asserts the submitted information is excepted under section 552.108 of the Government Code, which provides 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 the requirements of Section 552.021 if:

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.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; [or]

...

(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)(1)-(2), (4). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. Section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. Section 552.108(a)(4) protects information that was prepared by an attorney for the state for litigation or that reflects an attorney's legal reasoning. A governmental body that claims an exception to disclosure under section 552.108 must explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The county attorney's office states some of the submitted information relates to a pending prosecution by the Travis County District Attorney's Office (the "district attorney's office"). The county attorney's office informs us the district attorney's office "objects to the release of the responsive information related to this investigation because doing so would interfere with its continued investigation and potential prosecution of the underlying incidents." Based on this representation and our review, we find release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the county attorney's office may withhold the information it marked under section 552.108(a)(1) of the Government Code.²

²As our ruling is dispositive, we need not address the county attorney's office's remaining argument against disclosure of this information.

The county attorney's office also states some of the remaining information pertains to concluded investigations that did not result in convictions or deferred adjudications. Based on this representation and our review, we find the county attorney's office may withhold the information it marked under section 552.108(a)(2) of the Government Code.

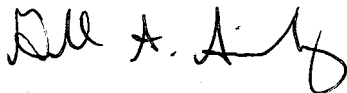
The county attorney's office further states the remaining information was prepared by its prosecutors or their staff in anticipation of or in the course of preparing for potential litigation and reflects the prosecutor's mental impressions and legal reasoning. Upon review, we agree the information at issue reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude the information at issue is subject to section 552.108(a)(4). Thus, the county attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.³

In summary, the county attorney's office may withhold the information it marked under section 552.108(a)(1) of the Government Code. The county attorney's office may withhold the information it marked under section 552.108(a)(2) of the Government Code. The county attorney's office may withhold the remaining 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

³As our ruling is dispositive, we need not address the county attorney's office's remaining argument against disclosure of this information.

Ref: ID# 682335

Enc. Submitted documents

c: Requestor
(w/o enclosures)