



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 27, 2017

Mr. Bill Delmore
Assistant District Attorney
County of Montgomery
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2017-26756

Dear Mr. Delmore:

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# 686930.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for a list of video evidence obtained in a specified case. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we understand the district attorney's office to argue it does not maintain the requested information in a responsive format. The 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). A governmental body is not required to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. *See Gov't Code* § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. As you have submitted information

for our review, we assume the district attorney's office has made a good-faith effort to relate the request to information the district attorney's office maintains.

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). Sections 552.108(a)(4) and (b)(3) protect information that was prepared by an attorney for the state for litigation or that reflects an attorney's legal reasoning. A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the submitted information was prepared by an attorney representing

the state or a staff member working at the direction of the attorney, and they were created in anticipation of criminal litigation. You also state the information at issue reflects the mental impressions or legal reasoning of prosecutors representing the state. 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 sections 552.108(a)(4) and (b)(3) of the Government Code. Therefore, the district attorney's office may withhold the submitted information under subsections 552.108(a)(4) and (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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/som

Ref: ID# 686930

Enc. Submitted documents

c: Requestor
(w/o enclosures)