



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Mr. Mark Kratovil  
Assistant Criminal District Attorney  
Tarrant County  
401 West Belknap Street, 9th Floor  
Fort Worth, Texas 76196-0201

OR2019-19101

Dear Mr. Kratovil:

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# 775278.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to the grand jury proceedings for a specified cause number. You claim some of 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 information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses article 20.02(a) of the Code of Criminal Procedure, which provides "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). In construing article 20.02 of the Code of Criminal Procedure, the types of "proceedings" Texas courts have generally stated are secret are testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding). You state the information you marked consists of a transcript of the testimony of a grand jury witness as well as the grand jury minutes sheet, which reflects the proceedings and results of the grand jury's deliberations. Based on your representations, we find the information you marked is confidential under article 20.02(a) of the Code of Criminal Procedure and the district attorney's office must

withhold it under section 552.101 of the Government Code on that ground.<sup>1</sup> *See* Open Records Decision No. 513 at 4 (1988) (information must be withheld if its release would reveal grand jury's deliberations).

Section 552.108 of the Government Code states, in 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 the requirements of Section 552.021 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 must explain how and why this exception is applicable to

---

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

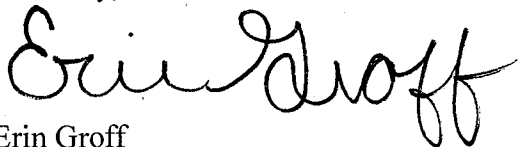
the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Upon review, we find you have failed to demonstrate the remaining information at issue was prepared by the district attorney's office in anticipation of or in the course of preparing for criminal litigation or represents the mental impressions or legal reasoning of an attorney representing the state. Accordingly, the district attorney's office may not withhold the remaining information at issue under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code.

In summary, the district attorney's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with article 20.02(a) of the Code of Criminal Procedure. The district attorney's office must release the remaining information.

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](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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/be

Ref: ID# 775278

Enc. Submitted documents

c: Requestor  
(w/o enclosures)