



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 2, 2019

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

OR2019-21435

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# 778480 (TCDA ID No. 704208-1).

The Travis County District Attorney's Office (the "district attorney's office") received a request for "the case numbers . . . for each of the 1,306 cases that were dismissed 'due to factual or legal sufficiency problems' . . . referenced in the [district attorney's office's] 2017 Annual Report[.]" The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the district attorney's office claims and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor seeks only the case numbers associated with the specified category of cases. The district attorney's office has submitted information beyond the requested information. Thus, the portions of the submitted information that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release that information in response to the request.

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.

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.

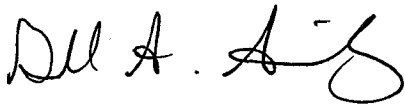
Id. § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under subsection 552.108(a)(4) or subsection 552.108(b)(3) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A). The district attorney's office argues the responsive information consists of internal records or notations prepared by attorneys representing the state in preparation of criminal litigation. Based on the district attorney's office's representation and our review, we agree subsection 552.108(a)(4) and subsection 552.108(b)(3) are applicable to the information at issue. Accordingly, the district attorney's office may withhold the responsive information under subsection 552.108(a)(4) and subsection 552.108(b)(3) of the Government Code.²

²As our ruling is dispositive, we need not address the district attorney's office's remaining argument against disclosure of this 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 778480

Enc. Submitted documents

c: Requestor
(w/o enclosures)