



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2019

Mr. Jaun A. Roque
Assistant District Attorney
Bexar County District Attorney's Office
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2019-29872

Dear Mr. Roque:

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# 792856 (File No. 7770-DA).

The Bexar County District Attorney's Office (the "district attorney's office") received a request for seven categories of information pertaining to pretrial diversion programs. 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 representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the request because it was created after the date the district attorney's office received the request. This ruling does not address the public availability of non-responsive information and it need not be released in response to this request.

Section 552.108 of the Government Code states, in pertinent part:

¹ We 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.

(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 must explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the responsive information consists of internal notations or records prepared by the district attorney's office and reflects the mental impressions or legal reasoning of attorneys representing the state. Based on your representations and our review, we agree subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to the information at issue. Accordingly, the district attorney's office may withhold the submitted information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.²

²As our ruling is dispositive, we need not address your 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/mo

Ref: ID# 792856

Enc. Submitted documents

c: Requestor
(w/o enclosures)