



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 29, 2019

Ms. Elizabeth Stevens
Assistant General Counsel
Harris County District Attorney's Office
500 Jefferson Street, Suite 600
Houston, Texas 77002

OR2019-30557

Dear Ms. Stevens:

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# 792582.

The Harris County District Attorney's Office (the "district attorney's office") received a request for all e-mails between the Houston Police Department or the Harris County Sheriff's Office and a named individual.¹ You claim the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² 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).

Section 552.108 of the Government Code states, in relevant part, the following:

¹ The district attorney's office sought clarification of the information requested and received a response. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

² 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. 449 (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 that 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 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). You state the submitted information reflects the mental impressions or legal reasoning of attorneys representing the state. Upon review, we agree the information at issue reflects the mental processes or legal reasoning of an attorney representing the state and thus subject to subsections 552.108(a)(4) and (b)(3) of the Government Code. Accordingly, the district attorney's office may withhold the submitted information under subsections 552.108(a)(4) and (b)(3) of the Government Code.³

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.

³ As our ruling is dispositive, we need not address the district attorney's office remaining arguments against disclosure of the submitted information.

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 cursive script that reads "Kimbell Kesling". The signature is written in black ink and is positioned above the typed name.

Kimbell Kesling
Attorney
Open Records Division

KK/gw

Ref: ID# 792582

c: Requestor