



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 13, 2019

Mr. Bill Delmore  
Chief, Legal Services Bureau  
Montgomery County  
207 West Phillips, 2<sup>nd</sup> Floor  
Conroe, Texas 77301

OR2019-31917

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# 796635.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for information pertaining to two prosecution files involving the requestor's client. You state you will release some information to the requestor upon payment of costs. You claim some of the submitted information is not subject to the Act. You also claim 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.

You state appendix B, which consists of an electronic recording of testimony in front of a grand jury, is held by the district attorney's office solely as an agent of the grand jury and is a record of the judiciary. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that for the purposes of the Act, a grand jury is a part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. *See* Open Records Decision Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Based on your representations the information at issue is held by the district attorney's office solely as an agent of the grand jury and our review, we find appendix B

consists of a record of the judiciary. Therefore, appendix B is not subject to disclosure under the Act.<sup>1</sup>

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). 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 appendix C consists of internal records or notations prepared by attorneys representing the state in preparation of criminal litigation. Based on your representation and our review, we agree section 552.108(a)(4) and section 552.108(b)(3)

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

are applicable to the information at issue. Accordingly, the district attorney's office may withhold appendix C under section 552.108(a)(4) and section 552.108(b)(3) of the Government Code.

In summary, appendix B consists of a record of the judiciary that is not subject to disclosure under the Act, and the district attorney's office is not required to release that information in response to the instant request. The district attorney's office may withhold appendix C under section 552.108(a)(4) and section 552.108(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 <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 "D. Michelle Case", followed by a long horizontal flourish.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/be

Ref: ID# 796635

Enc. Submitted documents

c: Requestor  
(w/o enclosures)