



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2020

Ms. Clara H. Saafir
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202-3317

OR2020-03970

Dear Ms. Saafir:

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# 811012.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information related to the district attorney's office's use of mobile device forensic technologies. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

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 Exhibit A was prepared by and reflects the mental impressions and legal reasoning of attorneys representing the state in anticipation of preparing for criminal litigation. Based on your representations and our review, we agree sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to Exhibit A. Accordingly, the district attorney's office may withhold Exhibit A under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.²

Section 552.108 of the Government Code also provides, in part:

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(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:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), (b)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit B relates to closed criminal cases that did not result in convictions or deferred adjudications. Upon review, we find some of the information at issue is subject to section 552.108(a)(2) of the Government Code. However, we note the information we have marked for release resulted in convictions. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to this information, and the district attorney's office may not withhold this information on that basis.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the names of arrestees and investigating officers. *See id.* at 3-4. Accordingly, with the exception of basic information and the information we marked for release, the district attorney's office may withhold Exhibit B under section 552.108(a)(2) of the Government Code. However, we note the remaining information is not information that deals with the detection, investigation, or prosecution of crime in

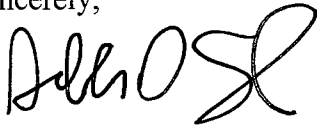
relation to criminal investigations that did not result in convictions or deferred adjudications. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the remaining information, and the district attorney's office may not withhold the remaining information on those bases.

In summary, the district attorney's office may withhold Exhibit A under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. With the exception of basic information, which must be released, and the additional information we marked for release, the district attorney's office may withhold Exhibit B under section 552.108(a)(2) of the Government Code. 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 <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,



Deborah Southerland
Assistant Attorney General
Open Records Division

DS/gw

Ref: ID# 811012

Enc. Submitted documents

c: Requestor
(w/o enclosures)