



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2020

Mr. Wes Mau
Criminal District Attorney
Hays County Criminal District Attorney's Office
712 South Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2020-14114

Dear Mr. Mau:

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# 829317.

The Hays County Criminal District Attorney's Office (the "district attorney's office") received a request for certain information pertaining to a specified case. You 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 representative sample information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses article 20.02(a) of the Code of Criminal Procedure, which provides "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). Article 20.02, however, does not define "proceedings" for purposes of subsection (a). The Fourth Court of Appeals in *In re Reed* addressed the issue of what constitutes "proceedings" for purposes of article 20.02(a) and stated the term

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.

“proceedings” could “reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations.” *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding). Upon review, we find you have not demonstrated the submitted information reveals grand jury testimony or deliberations of the grand jury. Therefore, we conclude the district attorney’s office may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with article 20.02 of the Code of Criminal Procedure.

Section 552.108(a)(4) of the Government Code provides, in part:

(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.

Gov’t Code § 552.108(a)(4). 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). Upon review, we find the district attorney’s office has failed to demonstrate the submitted information was prepared by the county in anticipation of or in the course of preparing for criminal litigation or represents the mental impression or legal reasoning of an attorney representing the state. Thus, the district attorney’s office may not withhold the submitted information under section 552.108(a)(4) of the Government Code. The district attorney’s office must release the submitted 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

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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,

Jahna Ward
Assistant Attorney General
Open Records Division

JW/be

Ref: ID# 829317

Enc. Submitted documents

c: Requestor
(w/o enclosures)