



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 22, 2020

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

OR2020-14385

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# 830989 (PIR No. 2020.03-0053).

The Harris County District Attorney's Office (the "district attorney's office") received a request for Brady List information, including any information pertaining to disciplinary history of certain police officers. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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

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<sup>1</sup> Although you also raise section 552.101 of the Government Code in conjunction with rule 192.5 of the Texas Rules of Civil Procedure, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address your claim under section 552.101. Further, although you raise rule 192.5 of the Texas Rules of Civil Procedure, we note the proper exception to raise when asserting the work product privilege for information not subject to section 552.022 of the Government Code, as in this case, is section 552.111 of the Government Code. *See* Open Records Decision No. 677 at 1 (2002).

<sup>2</sup> 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 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.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also* Open Records Decision No. 434 at 2-3 (1986). You state the submitted information consists of internal records and notations containing the mental impressions or legal reasoning of an attorney representing the state. Based upon your representations, we find sections 552.108(a)(4) and 552.108(b)(3) are applicable to the information at issue. Therefore, the district attorney's office may withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>3</sup>

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.

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/be

Ref: ID# 830989

Enc. Submitted documents

c: Requestor  
(w/o enclosures)