



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2020

Ms. Bridget Chapman
Assistant District Attorney
Williamson County District Attorney's Office
405 Martin Luther King #1
Georgetown, Texas 78626

OR2020-23983

Dear Ms. Chapman:

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# 845565.

The Williamson County District Attorney's Office (the "district attorney's office") received a request for information pertaining to peace officers on Williamson County *Brady* lists. You state the district attorney's office does not maintain some of the requested information.¹ You also state the district attorney's office has directed the requestor to some of the requested information which is publicly available online. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted information, some of which is a representative sample.²

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² We assume that 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.

Initially, we note the information submitted as Exhibit B contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although the district attorney’s office seeks to withhold this information under sections 552.108 and 552.111 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See* Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, sections 552.108 and 552.111 do not make information confidential for the purposes of section 552.022. The Texas Supreme Court has held, however, the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the information at issue relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply, and this information may not be withheld on that basis. Thus, the district attorney’s office must release the court-filed document we marked pursuant to section 552.022(a)(17) of the Government Code. Further, we will address your arguments under section 552.108 and 552.111 for the information not subject to section 552.022.

You assert the remaining information is excepted under section 552.108 of the Government Code, which provides 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 the requirements of Section 552.021 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 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 remaining 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 remaining information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.³

In summary, the district attorney's office must release the marked court-filed document pursuant to section 552.022(a)(17) of the Government Code. The district attorney's office may withhold the remaining information under sections 552.108(a)(4) and 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jxd

³ As our ruling is dispositive, we need not address your remaining argument against disclosure.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)