



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 5, 2020

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

OR2020-27843

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# 852152 (ORR# 2020.08-0068, 2020.09-0061).

The Harris County District Attorney's Office (the "district attorney's office") received two requests from different requestors for information pertaining to time sheets of specified employees. The district attorney's office states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-27008 (2020). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the district attorney's office must rely on Open Records Letter No. 2020-27008 as a previous determination and withhold or release the identical information in accordance with that ruling.² We will address the district

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.

² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is

arguments of the attorney's office against the release of the submitted information not encompassed by Open Records Letter No. 2020-27008.

Section 552.108 of the Government Code provides, in 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 the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution [or]

...

(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)(1), (a)(4), (b)(1), (b)(3). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Upon review,

precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

we find the district attorney's office has failed to establish subsection 552.108(a)(1) or 552.108(b)(1) is applicable to the information at issue. Therefore, the district attorney's office may not withhold any of the submitted information on either of those grounds. Nevertheless, the district attorney's office asserts the information at issue reveals the actions taken by prosecutors during pending prosecutions. Upon review, we find subsections 552.108(a)(4) and 552.108(b)(3) are applicable to some of the submitted information, which we have marked. Therefore, the district attorney's office may withhold the information we have marked under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. However, the district attorney's office has failed to establish either of these subsections is applicable to the remaining information. Therefore, the district attorney's office may not withhold the remaining information under subsection 552.108(a)(4) and 552.108(b)(3).

In summary, the district attorney's office must rely on Open Records Letter No. 2020-27008 as a previous determination and withhold or release the identical information in accordance with that ruling. The district attorney's office may withhold the information we have marked under subsections 552.108(a)(4) and 552.108(b)(3) 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 852152

Enc. Submitted documents

c: Requestor
(w/o enclosures)