



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2022

Mr. Jason B. Supplee
Assistant District Attorney
Nueces County
901 Leopard Street, Room 206
Corpus Christi, Texas 78401

OR2022-06505

Dear Mr. Supplee:

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# 934886.

The Nueces County District Attorney's Office (the "district attorney's office") received a request for records related to a specified prosecution of a named individual. The district attorney's office states it is releasing some of the requested information. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted information.

Initially, we must address the district attorney's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The district attorney's office received the request for information on December 9, 2021. We understand the district attorney's office was closed on December 23, 2021, and December 24, 2021. The district attorney's office does not inform us it was closed for any additional business days between December 9, 2021, and December 27, 2021. Accordingly, the district attorney's office was required to provide the information required by section 552.301(b) by December 27, 2021. Although the district attorney's office timely raised sections 552.101 and 552.108 of the Government Code, we note the district attorney's office did not raise section 552.103 of the Government Code as required by sections 552.301(b) until December 29, 2021. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

Accordingly, we conclude the district attorney's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to its claim under section 552.103.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Upon review, we find the district attorney's office has failed to establish a compelling reason to address its claim under section 552.103 of the Government Code. However, we will consider the district attorney's office's arguments against disclosure under the exceptions to disclosure that were timely raised.

Section 552.108 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). The district attorney's office asserts the submitted information consists of internal notations or records prepared by the district attorney's office and reflects the mental impressions or legal reasoning of attorneys representing the state. Based on the district attorney's office's representations and our review, we agree subsection 552.108(a)(4) of the Government Code is applicable to the information at issue. Accordingly, the district attorney's office may withhold the submitted information under subsection 552.108(a)(4) of the Government Code.¹

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of 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 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 934886

Enc. Submitted documents

c: Requestor
(w/o enclosures)