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ATTORNEY GENERAL OF TEXAS

May 10, 2022

Ms. Morgan Day Vaughn
Counsel for the Lubbock Private Defender's Office
Crenshaw Dupree & Milam, LLP
P.O. Box 64479
Lubbock, Texas 79464-4479

OR2022-13412

Dear Ms. Vaughn:

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# 946834 (Ref. No. 10230.76916).

The Lubbock Private Defender's Office (the "private defender's office"), which you represent, received a request for certain communications pertaining to Operation Lone Star during a specified time period and certain e-mails from a named employee to specified individuals during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.1175, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information because it was not created during the requested time period. This ruling does not address the public availability of any information that is not responsive to the request, and the private defender's office is not required to release such information in response to this request.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." See Gov't Code § 552.111. This section encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of*

¹ Although you do not raise section 552.1175 of the Government Code in your brief, we understand the private defender's office to assert this exception based on your markings.

Garland v. Dallas Morning News, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

(1) [M]aterial prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. *Id.*; ORD 677 at 6-8. In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that

a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

Nat'l Tank Co. v. Brotherton, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204; ORD 677 at 7.

You state the responsive information you have marked was made in anticipation of litigation against the private defender's office's clients. You also state the responsive information you have marked consists of attorney notes and research that reflect the mental impressions, opinions, conclusions, and legal theories of attorneys from the private defender's office or hired by the private defender's office. Thus, you contend the responsive information you have marked was made in anticipation of litigation. Based on your representations and our review, we conclude the private defender's office may withhold the responsive information you have marked under the work product privilege encompassed by section 552.111 of the Government Code. The private defender's office must release the remaining responsive information.²

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.

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/eb

Ref: ID# 946834

Enc. Submitted documents

c: Requestor
(w/o enclosures)