



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2022

Mr. Bobbie Risner
Assistant General Counsel
Harris County
500 Jefferson Street, Suite 600
Houston, Texas 77002

OR2022-31247

Dear Mr. Risner:

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# 974162 (HCDA Tracking No. 2022.07-0069).

The Harris County District Attorney's Office (the "district attorney's office") received a request for specified e-mails during a particular time period. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note the submitted information includes documents that were filed with a court. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly 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 section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under

¹ Although you also raised sections 552.101 and 552.103 of the Government Code, you provide no arguments explaining how these exceptions are applicable to the information at issue. Therefore, we assume the district attorney's office no longer asserts these exceptions. *See* Gov't Code §§ 552.301, .302.

² 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.

the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the court-filed documents may not be withheld under section 552.108. As no further exceptions to disclosure have been raised, the district attorney's office must release the court-filed documents, which we have marked.

Section 552.108 of the Government Code states, in pertinent 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 [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). The district attorney's office contends the remaining information was prepared by a member of the district attorney's office in anticipation of and used in the course of preparing for the criminal prosecution at issue. Thus, the district attorney's office asserts the information at issue is the privileged work product of counsel representing the state. Based upon these representations and our review, we find section 552.108(a)(4) and 552.108(b)(3) are

applicable to some of the information at issue. Accordingly, with the exception of the information we have marked for release, 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. However, we find the district attorney's office has failed to establish the remaining information was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. Therefore, the district attorney's office may not withhold any of the remaining information under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code.

In summary, the district attorney's office must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the information we have marked for release, 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. 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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/eb

Ref: ID# 974162

Enc. Submitted documents

c: Requestor
(w/o enclosures)