



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2022

Mr. Bobbie K. Risner
Assistant District Attorney
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002

OR2022-36984

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# 983301 (Ref. No. 2022.09-0041).

The Harris County District Attorney's Office (the "district attorney's office") received a request for information pertaining to the requestor. You state the district attorney's office will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code states, in relevant 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). You state the submitted 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 some of the information at issue. Therefore, the district attorney's office may withhold the information we have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. However, you have failed to demonstrate the remaining information was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or represents the mental impression or legal reasoning of an attorney representing the state. Therefore, the district attorney's office may not withhold any portion of the remaining information under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code. The district attorney's office must release the remaining information.¹

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->

¹ We note the information being released contains an e-mail address to which the requestor has a right of access under section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b). However, Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold specific categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public under section 552.137 of the Government Code. Thus, if the district attorney's office receives another request for this same information from a person who does not have a right of access to it, Open Records Decision No. 684 authorizes the district attorney's office to redact the requestor's e-mail address without the necessity of requesting an attorney general decision.

[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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/pt

Ref: ID# 983301

Enc. Submitted documents

c: Requestor
(w/o enclosures)