



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 15, 2022

Mr. Stephen Nichols  
Assistant District Attorney  
Harris County  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

OR2022-39093

Dear Mr. Nichols:

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# 986397 (ORR# 2022.09-0087).

The Harris County District Attorney's Office (the "district attorney's office") received a request for information pertaining to named individuals. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information.

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:

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<sup>1</sup> Although the district attorney's office raises Texas Rule of Civil Procedure 192.5, we note the proper exception to raise when asserting the attorney work product privilege in this instance is section 552.111 of the Government Code. See Open Records Decision No. 677 (2002).

(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 asserts the submitted information was prepared by prosecutors for the district attorney's office in anticipation of or in preparation for trial. Thus, the district attorney's office asserts the information at issue reflects the mental impressions and legal reasoning of the prosecutors. Based upon these representations, we conclude the district attorney's office may generally withhold the submitted information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>2</sup>

However, the requestor is a representative of the Office of the Federal Public Defender for the Western District of Texas (the "public defender's office"). Section 411.1272 of the Government Code provides as follows:

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<sup>2</sup> As our ruling is dispositive, we do not address the other arguments of the district attorney's office to withhold this information.

The office of capital and forensic writs and a public defender's office are entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender's office has been appointed.

Gov't Code § 411.1272. In addition, section 411.087(a)(2) of the Government Code reads as follows:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

. . .

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* 411.082(2). Accordingly, the requestor has a right of access to the submitted CHRI pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender's office is appointed. *See id.* §§ 411.087(a)(2), .1272. A statutory right of access prevails over the Act's general exceptions to public disclosure, including sections 552.108 and 552.111 of the Government Code. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act).* Therefore, if the district attorney's office determines the submitted information relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must release the CHRI pursuant to sections 411.087 and 411.1272 of the Government Code.

In summary, with the exception of basic information, which the department must release, the department may withhold the submitted information under section subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. However, if the district attorney's office determines the submitted information relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the district attorney's office must release the CHRI pursuant to sections 411.087 and 411.1272 of the Government Code.

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/jxd

Ref: ID# 986397

c: Requestor