



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 8, 2010

Mr. Larry Roberson  
Assistant Criminal District Attorney  
Bexar County, Civil Section  
300 Dolorosa, 4<sup>th</sup> Floor  
San Antonio, Texas 78205

OR2010-01858

Dear Mr. Roberson:

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# 369508.

The Bexar County Criminal District Attorney's Office (the "district attorney") received a request for copies of any documents pertaining to the investigation and prosecution of a named individual. You state the requestor agreed to exclude certain documents from his request and was allowed to review other responsive documents. You claim the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted sample information.<sup>1</sup> We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit written comments concerning availability of requested information).

You contend the information at issue is excepted from disclosure under subsections 552.108(a)(4)(A) and (b)(3)(A) of the Government Code, which provide:

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<sup>1</sup>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.

(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;

...

(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.

Gov't Code § 552.108(a)(4)(A), (b)(3)(A). A governmental body that claims section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsections 552.108(a)(4)(A) and 552.108(b)(3)(A) apply to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation. You explain the information at issue is one investigator's compilation of notes taken by investigators during an interview. No portion of the information was created by an attorney. Thus, you have not shown this information was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation. Accordingly, we conclude the district attorney may not withhold the information from disclosure under either subsection 552.108(a)(4)(A) or 552.108(b)(3)(A) of the Government Code.

We note, however, that a portion of the information at issue is subject to section 552.101 of the Government Code, which excepts from public disclosure "information considered to be

confidential by law, either constitutional, statutory, or by judicial decision.”<sup>2</sup> Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. The information we have marked is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the district attorney must withhold the marked information from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy. The remaining information must be released.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHG/sdk

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 369508

Enc. Submitted documents

c: Requestor  
(w/o enclosures)