



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 24, 2011

Mr. Brian L. Rose
Assistant General Counsel
Harris County District Attorney
1201 Franklin, Suite 600
Houston, Texas 77002

OR2011-07328

Dear Mr. Rose:

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# 420266.

The Harris County District Attorney's Office (the "district attorney") received a request for five categories of information related to the discovery of a gun with a connection to the capital murder conviction of the requestor's client. You state you will release some responsive information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in part:

(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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You contend the information in Exhibit B reflects the mental impressions or legal reasoning of an attorney representing the State of Texas. You state this information was created in anticipation of or in the course of preparing for criminal litigation. Upon review, we find the information at issue was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, the district attorney may withhold the information in Exhibit B under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.¹

We note some of the remaining submitted information consists of Texas motor vehicle record information which is subject to section 552.130 of the Government Code.² Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the district attorney must withhold

¹As our ruling is dispositive, we need not address your remaining argument for this information.

²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

In summary, the district attorney may withhold the information in Exhibit B under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The district attorney must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.⁴

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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 420266

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).