



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2014

Mr. William Schultz  
Assistant District Attorney  
Denton County Criminal District Attorney's Office  
P.O. Box 2850  
Denton, Texas 76202

OR2014-02107

Dear Mr. Schultz:

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# 515447.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for (1) a list of police officers who are not eligible to be sponsored as witnesses with the district attorney's office and (2) names, badge numbers, agencies, and reasons for not being added to the list of any officers not listed on the "Officer Watch List." You assert the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.111 of the Government Code. You also state, and provide documentation showing, you notified interested third parties of the receipt by the district attorney's office of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received correspondence from the City of Carrollton, the City of The Colony, and the Town of Little Elm objecting to the release of some of the information at issue. *See id.* We have reviewed the submitted arguments and information.

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<sup>1</sup>The district attorney's office notified the following third parties: the police departments for the cities of Argyle, Aubrey, Bartonville, Carrollton, Corinth, Dallas, Denton, Flower Mound, Hickory Creek, Lake Dallas, Lewisville, Northlake, Oak Point, Pilot Point, Roanoke, Sanger, Southlake, and The Colony; the police department for the Town of Little Elm; the Department of Public Safety; the Douglas County Sheriff's Office; and the University of North Texas Police Department

Initially, we must address the obligations of the district attorney's office under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). The district attorney's office received the request for information on December 5, 2013. Thus, the ten-business-day deadline of the district attorney's office under section 552.301(b) was December 19, 2013. However, you did not raise section 552.102 of the Government Code until December 27, 2013. Thus, the district attorney's office failed to comply with the procedural requirements mandated by section 552.301(b) in raising section 552.102.<sup>2</sup>

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of the claimed exceptions. *See generally id.* § 552.302. However, section 552.102 of the Government Code is a mandatory exception that cannot be waived by the district attorney's office failures under section 552.301. Therefore, we will consider your arguments on that ground. However, we will first address your arguments under section 552.108 of the Government Code.

Section 552.108 of the Government Code provides in part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is exempted 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 [and]

(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 exempted from required public disclosure] if:

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<sup>2</sup>We note the district attorney's office complied with section 552.301(b) regarding the remaining exceptions asserted.

...

(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

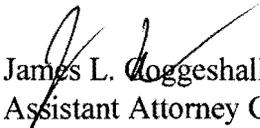
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

*Id.* § 552.108(a)(4), (b)(3). Generally a government body claiming section 552.108 must explain how and why the release of the information would interfere with a particular criminal investigation or prosecution. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information was prepared by the district attorney's office and reflects its mental impressions and legal reasoning. Upon review, we agree the submitted information reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude the submitted information is subject to subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. Thus, the district attorney's office may withhold the submitted information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. As our ruling is dispositive, we do not address the remaining arguments against disclosure of this 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

  
James L. Doggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 515447

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Ms. Michele Tapia  
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Public Information Officer  
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Public Information Officer  
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Public Information Officer  
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Public Information Officer  
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Public Information Officer  
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212 Main Street  
Lake Dallas, Texas 75065  
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Public Information Officer  
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1075 Ronald Reagan Avenue  
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Public Information Officer  
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Public Information Officer  
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Public Information Officer  
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Public Information Officer  
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Public Information Officer  
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Public Information Officer  
University of North Texas Police  
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