



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2014

Mr. Andrew Warthen  
Assistant Criminal District Attorney  
Civil Section  
County of Bexar  
300 Dolorosa, 5<sup>th</sup> Floor  
San Antonio, Texas 78205-3030

OR2014-18340

Dear Mr. Warthen:

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# 539228.

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received two requests for a list of all law enforcement officers whom the district attorney's office has identified as potentially impeachable witnesses and specified communications between the district attorney's office and local law enforcement agencies. The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that

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<sup>1</sup>Although you also raise section 552.101 of the Government Code, you do not provide any arguments regarding the applicability of this section. Therefore, we assume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

<sup>2</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.

interested party may submit comments stating why information should or should not be released).

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant requests for information because they were created after the district attorney's office received the requests. This ruling does not address the public availability of any information not responsive to the present requests, and the district attorney's office need not release non-responsive information in response to these requests.

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:

(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 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* Open Records Decision No. 434 at 2-3 (1986). The district attorney's office contends the responsive information was prepared by a prosecutor representing the state in anticipation of or in preparation for criminal litigation. Thus, the district attorney's office asserts the information at issue reflects the mental impressions, conclusions, and legal reasoning of the prosecutor. Based upon these representations, we find section 552.108(a)(4) is applicable to the responsive information. Accordingly, the district attorney's office may withhold the responsive information under section 552.108(a)(4) of the Government Code.<sup>3</sup>

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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 539228

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.