



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2009

Mr. Michael M. Kelly
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite # 301
Victoria, Texas 77901

OR2009-16417

Dear Mr. Kelly:

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#361774.

The Victoria County Criminal District Attorney (the "district attorney") received a request for 11 categories of records pertaining to a specified investigation. You state that you do not maintain records responsive to 6 categories of the request. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.108(a) provides the following:

¹Although you also raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note that, in this instance, the proper exceptions to raise when asserting the attorney-client and attorney work product privileges for information not subject to section 552.022 are sections 552.107 and 552.111. *See* Open Records Decision Nos. 677 (2002), 676 at 6 (2002).

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

Gov't Code § 552.108(a). Section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. You generally assert that the submitted information relates to an investigation that did not result in conviction or deferred adjudication. You also state this information was presented to the grand jury and a no-bill was returned by the grand jury on April 30, 2009. However, you assert that the statute of limitations has not run and that the case could be resubmitted to the grand jury with the discovery of additional evidence. Further, you assert that release of the information at issue would allow the potential defendant to thwart the further investigation of the alleged crime. Therefore, we understand you to claim section 552.108(a)(1) is applicable in this instance. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the release of this information would interfere with the detection, investigation or prosecution of a crime. Based on your representations and our review of the submitted investigation file, we conclude that section 552.108(a)(1) is applicable to portions of the submitted information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, the identification and description of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the

exception of the basic information, the district attorney may withhold the information we have marked under section 552.108(a)(1) of the Government Code.³

Next, section 552.108(b)(3) of the Government Code provides:

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

Gov't Code § 552.108(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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the information you have marked is an internal record prepared by an attorney representing the state in the course of preparing for litigation. Based on your representations and our review of the information at issue, we find that the information you have marked reflects the mental processes or legal reasoning of an attorney representing the state. We therefore conclude that the information you have marked is excepted from disclosure under section 552.108(b)(3).

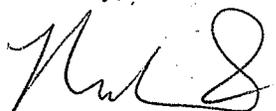
In summary, with the exception of the basic information, the district attorney may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The district attorney may withhold the information you have marked under section 552.108(b)(3) of the Government Code.

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.

³As we are able to make this determination under section 552.108, we need not address your remaining arguments, except to note that section 552.103 of the Government Code generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 361774

Enc. Submitted documents

cc: Requestor
(w/o enclosures)