



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2012

Mr. Scott A. Durfee
Assistant General Counsel
Office of the District Attorney
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002

OR2012-04597

Dear Mr. Durfee:

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# 449276.

The Harris County District Attorney's Office (the "district attorney's office") received a request for three categories of information: (1) a named individual's personnel file; (2) another named individual's e-mails from a specified time period pertaining to specified cases; and (3) any district attorney's office e-mails related to the specified cases and a specified list of these cases. You inform us that the district attorney's office will release the file requested in category one and the list requested in category three. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the submitted information were created after the request was received. This decision does not address the public availability of the non-responsive information, which we have marked, and that information need not be released in response to the present request.

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 submitted information reflects the mental impressions and legal reasoning of attorneys 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 submitted responsive information 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's office may withhold this information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 449276

Enc. Submitted documents

c: Requestor
(w/o enclosures)