



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2012

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody, Fifth Floor
Galveston, Texas 77550

OR2012-06814

Dear Ms. Reingold:

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# 453042.

The Galveston County Criminal District Attorney's Office and the Galveston County Sheriff's Office (collectively, the "county") received a request for the following information related to cases in the 212th District Court: (1) recordings of conversations between inmates and their attorneys and related records released to the district attorney's office during a specified time period; (2) correspondence between the district attorney's office and the sheriff's office regarding access to and release of those recordings to the district attorney's office during a specified time period; (3) a list of all instances in which district attorney's office employees accessed those recordings and the names of any employees with access to those recordings, during a specified time period; and (4) any records in which attorneys representing certain inmates were notified their conversations with their clients had been recorded or listened to by third parties. You state you have released some information to the requestor. You further state you have no information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.137 of the Government

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Code, and privileged under article 39.14 of the Texas Code of Criminal Procedure.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, you state the county sought clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state the county has not yet received clarification from the requestor. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted information responsive to the portion of the request for which you sought clarification and have raised exceptions to disclosure for this information, we will address the applicability of the claimed exceptions to this information.

Next, you state, and we agree, the submitted recordings and call list are not responsive to the present request because they do not consist of records or recordings of calls between inmates and attorneys, or were created after the date the county received the instant request. This decision does not address the public availability of the non-responsive information 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:

²Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence and article 39.14 of the Texas Code of Criminal Procedure, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). You also claim this information is protected under the attorney-client privilege based on Texas Rule of Evidence 503. In this instance, however, the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107. *See* ORD 676 at 3.

³We assume the "representative sample" of information 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.

...

(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). 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 responsive 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 county may withhold this information under section 552.108(a)(4) of the Government Code.⁴

⁴As 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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 453042

Enc. Submitted documents

c: Requestor
(w/o enclosures)