



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2014

Ms. Ashley D. Fourt
Assistant District Attorney
County of Tarrant
401 West Belknap
Fort Worth, Texas 76196-0201

OR2014-17078

Dear Ms. Fourt:

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# 539390.

The Tarrant County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for a list and number of officers whom the agency has identified as potentially impeachable witnesses and communications between the district attorney's office and local law enforcement agencies since 2009 regarding that issue. The district attorney's office states it does not have some of the requested information.¹ The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.117 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by a representative of one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the assertion of the requestor's representative that the district attorney's office failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 prescribes procedures a governmental body must follow

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

in asking this office to determine whether information is excepted from public disclosure under the Act. *See* Gov't Code § 552.301(a). Section 552.301(e)(1)(A) requires the governmental body to submit to this office "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]" *Id.* § 552.301(e)(1)(A). Pursuant to section 552.301(e-1), the governmental body must send a copy of those written comments to the requestor within fifteen business days of receiving the request for information. *See id.* § 552.301(e-1). The requestor's representative claims the requestor has not received notice from the district attorney's office that it would withhold information or seek a decision from this office. *See id.* The determination of whether a governmental body mailed a copy of the written comments to the requestor is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. ORD 552 at 4. The district attorney's office states it received the initial request for information on July 23, 2014.² Accordingly, the fifteen-business-day deadline of the district attorney's office was August 13, 2014. The envelope in which the district attorney's office submitted its written comments to this office is postmarked August 6, 2014. *See* Gov't Code § 552.308(a) (describing rules for calculating submission dates of documents sent via first class United States mail). The district attorney's office's brief also reflects the district attorney's office e-mailed a copy of its comments to the requestor's e-mail address concurrent with the timely mailing to this office. Consequently, based on the correspondence of the district attorney's office, we find the district attorney's office complied with section 552.301(e-1) of the Government Code in requesting this ruling. Therefore, we will consider the arguments of the district attorney's office against disclosure of the submitted information.

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

(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

²The district attorney's office states it received the requestor's second request for information on August 6, 2014, but informs us the information responsive to the second request is the same as that responsive to the first.

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

Id. § 552.108(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 section 552.108(b)(3) of the Government Code. Thus, the district attorney's office may withhold the submitted information under section 552.108(b)(3) of the Government Code.³

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, 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. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 539390

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your other arguments to withhold this information.