



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2014

Mr. William Schultz
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2014-18258

Dear Mr. Schultz:

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# 539094.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received two requests from the same requestor for (1) a list, as well as the number, of all law enforcement officers the district attorney's office has identified as potentially impeachable witnesses; and (2) any communications from January 1, 2009 to the date of the request between the district attorney's office and any local law enforcement agency informing the law enforcement agency it could not sponsor a law enforcement officer as a witness, or a law enforcement officer's testimony could be considered impeachable. You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from an attorney representing the requestor and several interested third

¹We 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.

parties. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we find a portion of the submitted information, which we have marked, is not responsive to the instant request because it is not (1) a list, or the number, of all law enforcement officers the district attorney's office has identified as potentially impeachable witnesses; or (2) a communication between the district attorney's office and a local law enforcement agency informing the law enforcement agency it could not sponsor a law enforcement officer as a witness, or a law enforcement officer's testimony could be considered impeachable. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney's office is not required to release such information in response to the request. *See 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) (governmental body not required to disclose information that did not exist at time request was received).

You state the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2014-02107 (2014). In that ruling, we determined the district attorney's office may withhold the submitted information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. However, we note the information at issue has been updated since the previous ruling was issued. Accordingly, we find the facts and circumstances on which the previous ruling was based have changed with regard to the information at issue. Thus, the district attorney's office may not rely on Open Records Letter No. 2014-02107 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Therefore, we will consider your arguments against disclosure for the requested information.

Section 552.108 of the Government Code provides in 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 [and]

(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). 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 information at issue was prepared by the district attorney's office and reflects its mental impressions and legal reasoning. Upon review, we agree the information at issue reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude the information at issue is subject to section 552.108(a)(4) of the Government Code. Thus, the district attorney's office may withhold the requested information under section 552.108(a)(4) of the Government Code.²

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

²As our ruling is dispositive, we do not address your remaining arguments to withhold this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/ac

Ref: ID# 539094

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. William Christian
For the Austin American-Statesman
Graves Dougherty Hearon & Moody
P.O. Box 98
Austin, Texas 78767
(w/o enclosures)

Ms. Julia Gannaway
For the Town of Little Elm
Lynn, Ross & Gannaway, LLP
306 West Broadway Avenue
Fort Worth, Texas 76104
(w/o enclosures)

Ms. Regina Edwards
First Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006
(w/o enclosures)