KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 9, 2015

Ms. Kathryn Kraft
Assistant Criminal District Attorney
Civil Division
Dallas County District Attorney's Office
411 Elm Street. Fifth Floor
Dallas, Texas 75202-3317

OR2015-11281

Dear Ms. Kraft:

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# 566589.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for the personnel file of a former district attorney's office employee. You state the district attorney's office has released some information. 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.

You assert the submitted information is excepted under subsections 552.108(b)(1) and (b)(3)(B) of the Government Code, which provide 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 the requirements of Section 552.021 if:
>
> > (1) release of the internal record or notation would interfere with law enforcement or prosecution;

> . . .
>
> (3) the internal record or notation:
>
> > . . .
> >
> > (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(b)(1), (3)(B). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). We note section 552.108 is generally not applicable to the records that are purely administrative in nature and that do not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d at 320; *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

You assert the submitted "self-assessments" contain a former prosecutor's mental impressions of criminal cases. You further assert the information at issue reflects the former prosecutor's legal reasoning and details her thought process in resolving criminal matters. You claim the submitted information reflects the trial strategies of an individual prosecutor and the district attorney's office as a whole. You explain these documents were used to evaluate the former prosecutor's job performance. Upon review, we find the district attorney's office may withhold the information we marked under

subsection 552.108(b)(3)(B) of the Government Code.[1] However, we find you have not demonstrated how release of any of the remaining information would interfere with law enforcement or crime prevention. Consequently, the district attorney's office may not withhold any of the remaining information under subsection 552.108(b)(1) of the Government Code. Further, we find the district attorney's office has failed to demonstrate the remaining information consists of mental impressions, opinions, conclusions or legal theories of an attorney or an attorney's representative. Therefore, we find you have failed to demonstrate the remaining information is protected by subsection 552.108(b)(3)(B), and the district attorney's office may not withhold it under section 552.108 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released.

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,

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 566589

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[1]As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.