



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2015

Mr. William Schultz
Assistant District Attorney
Denton County Criminal District Attorney's Office
1450 East McKinney, Suite 3100
Denton, Texas 76202

OR2015-15195

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# 573924.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for a copy of the district attorney's office's *Brady* list. You claim the submitted 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 information.

Initially, we note some of the submitted information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2014-18258 (2014) and 2014-02107 (2014). In Open Records Letter No. 2014-18258, we ruled the district attorney's office may withhold the requested information under section 552.108(a)(4) of the Government Code. In Open Records Letter No. 2014-02107, we determined the district attorney's office may withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. We have no indication the law, facts, or circumstances on which these prior rulings were based have changed. Accordingly, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, we conclude the district attorney's office may continue to rely on Open Records Letter Nos. 2014-18258 and 2014-02107 as previous determinations and withhold that information in accordance with those rulings. *See* Open

Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). To the extent the submitted information is not subject to Open Records Letter No. 2014-18258 or Open Records Letter No. 2014-02107, we will address your arguments against disclosure.

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 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(a)(4) of the Government Code. Thus, the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code.¹

However, we note the requestor is an official of the Lake Dallas Police Department (the "department") and may be seeking the requested information in his official capacity as a representative of the department. In that event, the district attorney's office has the discretion to release the information at issue pursuant to an intergovernmental transfer. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

We note sections 552.102, 552.108 and 552.111 of the Government Code and the doctrine of common-law privacy do not have specific release provisions governing public release of information. Thus, pursuant to the intergovernmental transfer doctrine, the district attorney's office has the discretion to release any information subject to sections 552.102, 552.108 and 552.111 and common-law privacy. Furthermore, the release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the district attorney's office does not waive its interests in withholding this information by exercising its discretion under the intergovernmental transfer doctrine.

In summary, the district attorney's office has the discretion to release the submitted information to the department under the intergovernmental transfer doctrine. Should the

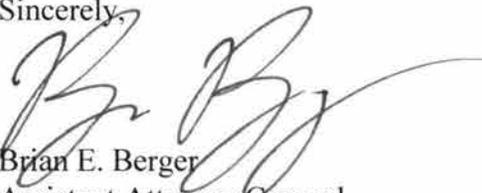
¹As our ruling is dispositive, we do not address your remaining arguments to withhold this information.

district attorney's office choose not to exercise its discretion under the intergovernmental transfer doctrine, then (1) to the extent the submitted information is identical to the information previously submitted and ruled on by this office, the district attorney's office may withhold that information in accordance with Open Records Letter Nos. 2014-18258 and 2014-02107, and (2) the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 573924

Enc. Submitted documents

c: Requestor
(w/o enclosures)