



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 31, 2015

Mr. Scott A. Durfee  
Assistant General Counsel  
Office of the District Attorney  
Harris County  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

OR2015-15662

Dear Mr. Durfee:

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# 574093.

The Harris County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for all e-mails and attachments sent between district attorney's office employees or officials regarding a named Houston Forensic Center blood analyst and any potential *Brady* disclosures, and all *Brady* notices provided by the district attorney's office to the Harris County Public Defender's Office, other appointed lawyers or retained lawyers regarding the named blood analyst and an investigation by the Texas Forensic Science Commission and/or the American Society of Crime Laboratory Directors/Laboratory Accreditation Board. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Section 552.108 of the Government Code states in pertinent 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.

...

(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). A governmental body claiming 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* Open Records Decision No. 434 at 2-3 (1986).

The district attorney's office contends the submitted information was prepared by an attorney representing the State of Texas in anticipation of or in preparation for criminal litigation and reflects the mental impressions and legal reasoning of the assistant district attorney. Based

upon these representations, we find the district attorney's office may withhold the submitted information under section 552.108(a)(4) and section 552.108(b)(3) of the Government Code.<sup>2</sup>

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](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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 574093

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the district attorney's office's remaining argument against disclosure.