



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2015-17568

Dear Ms. Sheely:

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# 576731.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to four specified cases, including correspondence to and from the district attorney's office regarding the specified cases.<sup>1</sup> You state you will release most of the information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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<sup>1</sup> We note you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the district attorney's office received the required deposit on June 9, 2015. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

<sup>2</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.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of information from completed investigations that is subject to section 552.022(a)(1). The district attorney's office must release the information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold a portion of the submitted information under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception and does not make information confidential under the Act. *See Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver).* Therefore, no portion of the submitted information may be withheld under section 552.111 of the Government Code. We note the attorney work-product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure, which has been held to be other law within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, those rules are applicable only to "actions of a civil nature." *See TEX. R. CIV. P. 2.* Thus, because the submitted information pertains to criminal cases, rule 192.5 is not applicable to the submitted information. Therefore, the district attorney's office may not withhold the information at issue on the basis of the work-product privilege in Texas Rule of Civil Procedure 192.5. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider the claims the district attorney's asserts under this exception.

The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(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

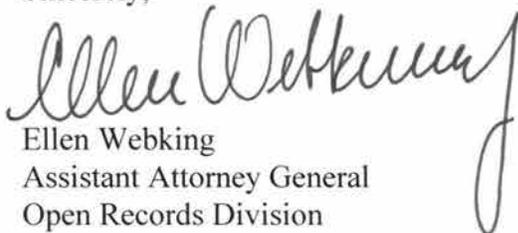
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body that claims an exception to disclosure under section 552.108(a)(4) must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 552 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The district attorney's office explains the information at issue constitutes information held and prepared by an attorney representing the state in anticipation of or in preparation for trial. The district attorney's office asserts the information reflects the mental impressions of the prosecutor. Upon review, we agree section 552.108(a)(4) is applicable to the submitted information. Accordingly, the district attorney's office may withhold the submitted 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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 576731

Enc. Submitted documents

c: Requestor  
(w/o enclosures)