



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2015

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

OR2015-18790

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# 579157.

The Harris County District Attorney's Office (the "district attorney's office") received a request for information pertaining to the capital murder prosecution of a named individual, including, (1) information regarding the named individual's educational background; (2) the district attorney's office's policies and procedures relating to discovery and information retention from 1991 to 2014; (3) information regarding previous file requests; (4) records maintained by specified employees of the district attorney's office; and (5) information concerning district attorney's office personnel involved in the prosecution at issue. You state the district attorney's office does not possess information responsive to a portion of the request.<sup>1</sup> You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.108 of the Government Code provides 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 the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

...

(3) the internal record or notation:

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<sup>2</sup>We 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.

(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.

*Id.* § 552.108(a)(1), (4), (b)(1), (3). 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). You state the named individual is currently seeking habeas corpus review in the United States District Court for the Southern District of Texas. We note a habeas corpus proceeding is a civil proceeding. Accordingly, the district attorney's office has not shown how a habeas corpus proceeding is a criminal prosecution for purposes of section 552.108(a)(1) or section 552.108(b)(1). Therefore, we conclude the district attorney's office may not withhold any of the submitted information under section 552.108(a)(1) or section 552.108(b)(1) of the Government Code.

You also raise sections 552.108(a)(4) and 552.108(b)(3) of the Government Code for Exhibit C-1. You state this information was prepared by attorneys representing the state in anticipation of or in the course of preparing for criminal litigation. You further state the information at issue contains the attorneys' mental impressions. Based on your representations and our review, we agree Exhibit C-1 was prepared in anticipation of or in the course of preparing for criminal litigation, and contains the mental impressions or legal reasoning of an attorney representing the state. Therefore, the district attorney's office may withhold Exhibit C-1 under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The remaining information must be released.<sup>3</sup>

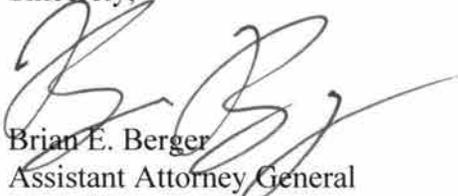
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>3</sup>We note the information being released contains the named individual's social security number, to which the requestor, as the named individual's authorized representative, has a right of access. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, if the district attorney's office receives another request from a different requestor, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Gov't Code* § 552.147(b).

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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 579157

Enc. Submitted documents

c: Requestor  
(w/o enclosures)