



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2015

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

OR2015-20169

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# 580643.

The Denton County District Attorney's Office (the "district attorney's office") received a request for (1) any list(s) referred to as a "Brady List" and (2) any communications referring to persons not allowed or not preferred to testify. You claim the submitted information is exempted from disclosure under sections 552.101, 552.102, 552.108, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

You state the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2014-02107 (2014). In that ruling, we determined the district attorney's office may withhold the submitted information

¹We note the district attorney's office failed to comply with the procedural requirements of section 552.301 of the Government Code with respect to its argument under section 552.102 of the Government Code. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, section 552.102 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the violation by the district attorney's office of section 552.301 in requesting this decision.

²We 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.

under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. However, we note the list at issue has been updated since the previous ruling was issued. Accordingly, we find the facts and circumstances on which the previous ruling was based have changed with regard to the list at issue. Moreover, we note the remaining information submitted in response to the present request was created after the date of the request in Open Records Letter No. 2014-02107. Thus, the remaining submitted information was not responsive to the previous request. As a result, the district attorney's office may not rely on Open Records Letter No. 2014-02107 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Therefore, we will consider your arguments against disclosure for the requested information.

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.

(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 governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Rec. Dec. No. 434 at 2-3 (1986). 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.³

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 580643

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your remaining arguments to withhold this information.