



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2015

Ms. Meagan T. Scott
Assistant District Attorney
Office of the District Attorney
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2015-20334

Dear Ms. Scott:

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# 581172.

The Harris County District Attorney's Office (the "district attorney's office") received a request for all e-mails from district attorney's office employees to "All Prosecutors" and/or "All DA Employees" containing specified terms during a specified period of time. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ Additionally, we have considered comments from the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it was not created within the time period specified in the request. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release such information in response to this request.

¹We 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.

Next, we understand the requestor to argue the district attorney's office has an obligation to disclose the submitted information to her, as defense counsel in a possible criminal prosecution, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and, thus, the district attorney's office may not withhold this information under the Act. In *Brady*, the United States Supreme Court held the prosecution is required to provide the defense with all potentially exculpatory evidence. 373 U.S. at 87. However, we note *Brady* addresses prosecutorial requirements and does not affect the requirements outlined in the Act. Here, the requestor submitted her request for information to the district attorney's office pursuant to the Act. Accordingly, we will address the applicability of the Act to the submitted information.

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.

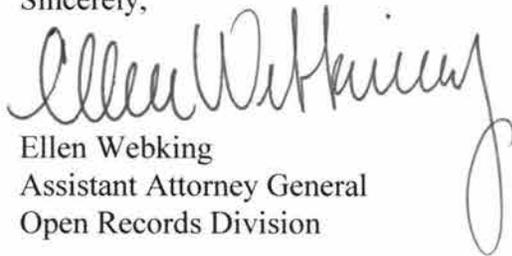
Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also* Open Records Decision 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.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 581172

Enc. Submitted documents

c: Requestor
(w/o enclosures)