



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 14, 2015

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

OR2015-26200

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# 590618.

The Harris County District Attorney's Office (the "district attorney's office") received a request for the district attorney's office's "'Brady list,' 'Giglio list,' 'potential impeachment disclosure list,' or any other records naming peace officers whose involvement in a criminal proceeding must be disclosed as potential exculpatory evidence." 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.<sup>1</sup>

Section 552.108 of the Government provides, in 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:

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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.

...

(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 subsection 552.108(a)(4) or (b)(3) must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue reflects the mental impressions and legal strategies of attorneys representing the state. You state this information was “generated to apprise assistant district attorneys about the existence of exculpatory evidence that may need to be disclosed in criminal cases involving the particular officer.” Upon review, we agree the information at issue reflects the mental impressions or legal reasoning of attorneys representing the state. Accordingly, we find the district attorney’s office may withhold the information at issue under sections 552.108(a)(4) and 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](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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized flourish above the first name.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 590618

Enc. Submitted documents

c: Requestor  
(w/o enclosures)