



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2016

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2016-09004

Dear Mr. Gates:

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# 607081 (ORR No. 18714).

The City of Midland (the "city") received a request for communications sent or received from the Midland Police Department regarding blood warrants for a specified time period. 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 information.

Initially, we note the submitted information contains court-filed documents subject to section 552.022 of the Government Code, which provides in pertinent part:

(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:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). This information, which we have marked, must be released unless it is made confidential under the Act or other law. *See id.* Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Open Records Decision No. 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally).* Therefore, the city may not withhold the information subject to section 552.022(a)(17) under section 552.108. As no other exceptions to disclosure have been raised, the information subject to section 552.022(a)(17) must be released. However, we will address your arguments against disclosure of the information not subject to section 552.022(a)(17).

Section 552.108 of the Government Code 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:

...

(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.

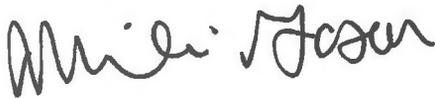
Gov't Code § 552.108(a)(4). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information reflects the mental impressions and legal strategies of district attorneys representing the state. Based on your representations and our review, we find the city has demonstrated the applicability of section 552.108(a)(4) to the information at issue. Therefore, with the exception of the court-filed documents, which must be released pursuant to section 552.022(a)(17), the city may withhold the remaining information under section 552.108(a)(4) of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in black ink that reads "Mili Gosar". The signature is written in a cursive, flowing style.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 607081

Enc. Submitted documents

c: Requestor
(w/o enclosures)