



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2016

Ms. Ekua A. Assabill
Assistant District Attorney
Brazos County District Attorney's Office
300 East 26th Street, Suite 310
Bryan, Texas 77803

OR2016-11665

Dear Ms. Assabill:

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# 611315.

The Brazos County District Attorney's Office (the "district attorney's office") received a request for information pertaining to the requestor's case. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions the district attorney's office claims and reviewed the submitted information.

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:

¹We note the requestor has a right of access to the information at issue pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k) (child victim of abuse or neglect who is at least 18 years of age has right of access to information otherwise confidential under section 261.201(a) of the Family Code). Nevertheless, we will consider the arguments the district attorney's office asserts pursuant to section 261.201(1)(2). *Id.* § 261.201(1)(2) (before child may inspect record, custodian of record must redact information that is excepted from required disclosure under the Act or other law).

...

(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). The district attorney's office states Exhibits B - D consist of notes, research, and analysis prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflect the mental impressions or legal reasoning of an attorney representing the state. Upon review of the information, we agree Exhibits B - D meet the criteria of this subsection, and the district attorney's office may withhold Exhibits B - D under section 552.108(a)(4).²

Next, the district attorney's office asserts Exhibit E is confidential pursuant to section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 611.002 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(2). Upon review, we find Exhibit E

²Because section 552.108(a)(4) is dispositive, we do not address the remaining argument for this information.

consists of a mental health record. Accordingly, the district attorney's office must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.³

In summary, the district attorney's office may withhold Exhibits B - D under section 552.108(a)(4) of the Government Code and must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 611315

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As section 611.002 of the Health and Safety Code is dispositive, we need not address the argument the district attorney's office asserts to withhold the information.