



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR2016-20897

Dear Ms. Sheely:

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# 626938.

The Travis County Attorney's Office (the "county attorney's office") received a request for all policies and procedures of the county attorney's office that relate to six divisions as well as general administrative policies. You state you will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.108, 552.111, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you state a portion of the requested information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2016-12663 (2016). In that ruling, we determined the county attorney's office may withhold specified training manuals under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the county attorney's office may continue to rely on Open Records Letter No. 2016-12663 as a previous

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.

determination and withhold the identical information in accordance with that ruling. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address your arguments against disclosure of the submitted information which is not subject to the prior ruling.

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 the requirements of Section 552.021 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 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).

You assert some of the submitted information consists of internal prosecutor manuals, procedures for prosecutors and staff, notes, memorandum, and e-mails for prosecutors, paralegals, and victim-witnesses coordinators to use when assisting in prosecution and litigation. You state the information at issue was formulated in anticipation of litigation and to assist in preparation and litigation of cases. You further state the information at issue includes advice on how to manage cases for prosecution, and procedural matters in the preparation and litigation of cases. Upon review, we find you have demonstrated the information at issue reflects the mental impressions and legal reasoning of attorneys representing the state. Therefore, the county attorney's office may withhold the information at issue under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.²

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

²As our ruling is dispositive to the information at issue, we need not address your remaining argument against disclosure of this information.

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You assert the remaining submitted information relates to the county attorney office's computer network security, including information related to passwords and operation and defense of the county attorney's office computer network. Thus, you argue release of the submitted information would seriously compromise the security of the county attorney's office computer network and reveal potential vulnerabilities of the county attorney's office computer security structure and system. Based on your representations, we find the remaining information is related to computer network security and the design, operation, or defense of a computer network. Thus, the county attorney's office must withhold the remaining information under section 552.139(a).

In summary, the county attorney's office may continue to rely on Open Records Letter No. 2016-12663 as a previous determination and withhold the identical information in accordance with that ruling. The county attorney's office may withhold the information we have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The county attorney's office must withhold the remaining information under section 552.139(a).

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 626938

Enc. Submitted documents

c: Requestor
(w/o enclosures)