



JOHN CREUZOT
CRIMINAL DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

July 15, 2020

Robert Montoya
Empower Texans
Via Email: rmontoya@empowertexans.com

Re: Public Information Act (PIA) request July 9, 2020 seeking the Dallas County District Attorney's Office's Brady List

Dear Mr. Montoya:

Please be advised that the Dallas County District Attorney's Office is withholding information that may be responsive to your request and has asked for a decision from the Texas Attorney General as to whether that information is excepted from required public disclosure.

I have enclosed a copy of the letter transmitted to the Attorney General today regarding your request. You will be notified when the Attorney General decides this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laura Anne Coats", written over a horizontal line.

Laura Anne Coats
Assistant District Attorney
Dallas County, Texas

Enclosures



JOHN CREUZOT
CRIMINAL DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

July 15, 2020

Honorable Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711

Re: Public Information Act (PIA) requests received July 8, 2020 and July 9, 2020 seeking the Dallas County District Attorney's Office's Brady List

Dear Sir:

On behalf of the Dallas County District Attorney's Office, I am seeking a determination whether the above-requested records are exempt from disclosure under the PIA. Requestors are seeking the Dallas County District Attorney's Office's Brady List.

On July 8, 2020, this Office received a request from Ken Kalthoff of NBC5 seeking this Office's "current" Brady List. *See* Exhibit A. On July 9, 2020,¹ this Office received a request from Robert Montoya seeking "a copy of your office's current list of officers with "potential Brady issues" and, if any archived versions of the lists exist, the more recent archived version of the list from the years 2013, 2014, 2015, 2016, 2017, 2018, and 2019." *See* Exhibit B. This Office does not retain "archived versions of the lists."

It is submitted that the requested information is exempt from disclosure for the following reasons:

¹ Please note that this Office's hours of business are 8:00 AM to 4:30 PM.

1. The information has been the subject of prior rulings and the circumstances have not changed.

The requested information has been the subject of numerous previous requests,² one of the most recent of which resulted in your Office issuing OR2019-00189. *See* Exhibit E. In that ruling, your Office concluded that the information at issue was work product made in anticipation of litigation and exempt from disclosure pursuant to section 552.111 of the Government Code. Tex. Gov't Code Ann. §552.111 (West 2012); *See* Exhibit I. To the extent that the instant requestors are requesting the same information as addressed in OR2019-00189 this Office requests to rely upon the prior ruling.

2. The requested information includes attorney work product dealing with the prosecution of crime.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." *See* Tex. Gov't Code Ann. § 552.111. This section encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.S.3d 351, 360 (Tex. 2000). Rule 192.5 defines work product as:

(1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

Tex. R. Civ. P. 192.5(a).

The requested information contains material prepared by attorneys representing the State in anticipation of or in the course of preparing for criminal litigation. *See* Exhibits F-M, and *see also* Tex. Att'y Gen. OR2015-25896 (El Paso County District Attorney's Office Brady list information exempted pursuant to Section 552.111); Tex. Att'y Gen. OR2017-065454 (Dallas County District Attorney's Office Brady List information exempted pursuant to Section 552.111).

² Your Office currently has a pending request regarding the information at issue sent by undersigned counsel to your Office on June 15, 2020, and requested by Ty Clevenger and Mark Smith. Frank Crowley Courts Building, 133 North Riverfront Boulevard, LB-19 Dallas, Texas 75207-4399 (214) 653-3600

3. The release of the requested information would interfere with law enforcement or prosecution (the “law enforcement exception”).

This Office seeks a determination that the requested information in Exhibits F-M, is excepted from disclosure under the PIA’s law. The information at issue reflects the mental impressions and legal reasoning of attorneys representing the State. *See* Exhibits F-M. This information was generated to apprise Assistant District Attorneys about the existence of exculpatory evidence, mitigating evidence, and possible relevant evidence that may need to be disclosed in criminal cases where a particular officer was involved.

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:

...

(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.

Tex. Gov’t Code Ann. § 552.108(a)(4).

Further, the information at issue consists of internal notations reflecting the mental impressions and legal strategies of attorneys representing the 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 particular officers.

Section 552.108(b)(3) of the Government Code reads as follows:

(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.

Tex. Gov't Code Ann. § 552.108(b)(3).

Your Office has consistently found that Brady Lists are exempt from disclosure pursuant to Section 552.108. *See e.g.* Tex. Att'y Gen. OR2016-24676 (Williamson County District Attorney's Office Brady list exempted pursuant to Section 552.108(a)(4)); Tex. Att'y Gen. OR2016-24649 (Bexar County District Attorney's Office Brady list information exempted pursuant to Section 552.108(b)(3)); Tex. Att'y Gen. OR2015-26200 (Harris County District Attorney's Office Brady list exempted pursuant to Section 552.108(a)(4), (b)(3)); Tex. Att'y Gen. OR2015-25147 (Denton County District Attorney's Office Brady list information exempted pursuant to Section 552.108(a)(4), (b)(3)); Tex. Att'y Gen. OR2015-18889 (El Paso County District Attorney's Office Brady list information exempted pursuant to Section 552.108(a)(4), (b)(3)).

4. The requested information contains information that is confidential by law.

This Office also seeks a determination that all information contained within the requested information in Exhibits F-M that is considered to be confidential by law may be withheld. *See* Tex. Gov't Code Ann. § 522.101. The PIA prohibits the release of confidential information, making such disclosure a misdemeanor offense, constituting official misconduct. *Id.* § 522.352. In light of the potential for criminal prosecution, this Office seeks a determination that the following types of information contained within the requested information are confidential by law and must be withheld (*See* Exhibits F-M):

CRIMINAL HISTORY RECORD INFORMATION

Criminal history information maintained by the Department of Public Safety or disseminated between criminal justice agencies. *See* Tex. Gov't Code Ann. § 411.084 (prohibiting release of criminal history information); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App. – Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (holding “rap sheets” and NCIC and TCIC printouts are confidential); ORD-565 (1995); *see also United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (holding release of criminal history records would violate the individual's common law right to privacy); ORD-616 (1993). *See* Exhibits F-M.

Finally, this Office seeks a determination that any other "confidential" information contained within the requested information that is not expressly set forth above is excepted from disclosure.

If you have any questions or need additional information, please contact me.

Sincerely,

JOHN CREUZOT
Criminal District Attorney
Dallas County, Texas



Laura Anne Coats
Assistant District Attorney
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Frank Crowley Courts Bldg.
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Enclosures

cc: Ken Kalthoff
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Robert Montoya
Via email at
rmontoya@empowertexans.com

(w/o enclosures)