



JOHN CREUZOT  
CRIMINAL DISTRICT ATTORNEY  
DALLAS COUNTY, TEXAS  
APPELLATE DIVISION

April 4, 2022

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

Re: Public Information Act request pertaining to *Brady* information  
pertaining to a specific Dallas Police officer. DCDA# 2022-1100

Dear Attorney General Paxton:

On March 28, 2022, the Dallas County District Attorney's Office (the "District Attorney's Office") received a Public Information Act ("PIA") request from Robert Montoya ("Requestor") seeking *Brady* information concerning a specific Dallas Police officer. *See* Exhibit A. The District Attorney's Office maintains an internal record titled, "DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE APPROVED PROTOCOL FOR DISCLOSURE COMPLIANCE OF LAW ENFORCEMENT AGENCIES, FORENSIC LABORATORIES & PROSECUTORS: 39.14(h) (MMA)/BRADY MATERIAL, ACQUISITION, AND DESIGNATIONS; NON-SPONSORSHIP OF WITNESSES," also commonly referred to as "the *Brady* list," which contains information responsive to the request. The *Brady* list is an internal record created and maintained by assistant district attorneys in preparation for criminal litigation. Information contained within this *Brady* list is released outside the District Attorney's Office only during criminal litigation pursuant the District Attorney's Office's continuing duties outlined under *Brady v. Maryland* and the Texas Michael Morton Act. *See* Tex. Code Crim. Proc. Ann. art. 39.14(h); *Brady v. Maryland*, 373 U.S. 83, 87 (1963). On behalf of the Dallas County District Attorney's Office, I am seeking a determination whether the responsive information from this *Brady* list is excepted from public disclosure under the PIA.

The District Attorney's Office asserts that the information sought is excepted from public disclosure as privileged work product. Section 552.108 of the Government Code states, as relevant here, 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 [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(a)(4), (b)(3).

As stated above, the enclosed exhibit is information maintained in the District Attorney's Office's *Brady* list, an internal record that contains information prepared by prosecutors in anticipation of or in the course of preparing for criminal litigation. *See* Exhibit C. 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 is involved. *See* Tex. Code Crim. Proc. Ann. art. 39.14(h). Further, the information sought contains the mental impressions, conclusions, and legal theories of the prosecutors relating to potential and current State witnesses, or the defendant in this specific case. *See* Exhibit C. Your office has consistently found that *Brady* lists are exempt from disclosure pursuant to section 552.108 of the Government Code. *See e.g.* Op. Tex. Att'y Gen. No. OR2017-17876 (2017) (Denton County District Attorney's Office *Brady* list information exempted pursuant to sections 552.108(a)(4), (b)(3)); Op. Tex. Att'y Gen. No. OR2017-06285 (2017) (Collin County District Attorney's Office *Brady* list exempted pursuant to sections 552.108(a)(4), (b)(3)); Op. Tex. Att'y Gen. OR2016-24676 (2016) (Williamson County District

Attorney's Office Brady list exempted pursuant to section 552.108(a)(4)); Op. Tex. Att'y Gen. OR2016-24649 (2016) (Bexar County District Attorney's Office Brady list information exempted pursuant to section 552.108(b)(3)); Op. Tex. Att'y Gen. OR2015-26200 (2015) (Harris County District Attorney's Office Brady list exempted pursuant to sections 552.108(a)(4), (b)(3)); Op. Tex. Att'y Gen. OR2015-18889 (2015) (El Paso County District Attorney's Office Brady list information exempted pursuant to sections 552.108(a)(4), (b)(3)). Accordingly, any responsive information in the possession of the District Attorney's Office constitutes work product of a prosecutor preparing for criminal prosecution and should be excepted from public disclosure pursuant to section 552.108 of the Texas Government Code.

Second, the District Attorney's Office asserts that the information contained within this work product is excepted from disclosure under the law enforcement exception. Section 552.108 of the Government Code also allows a prosecuting agency to withhold information by a prosecutor that deals with the detection, investigation, or prosecution of a crime, and is information that deals with detection, investigation, or prosecution of a crime only in relation to an investigation that did not result in conviction or deferred adjudication. *See* Tex. Gov't Code Ann. § 552.108(a)(2). In addition, the information sought includes internal records or notations of a prosecutor maintained for internal use in matters relating to law enforcement or prosecution, and the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(b)(2). The Dallas Police Department has informed the District Attorney's Office of internal investigations regarding a specific officer, which have concluded without submission to this office for prosecution or are still under review. *See* Exhibit C. Accordingly, the responsive records should be excepted from public disclosure pursuant to section 552.108 of the Texas Government Code.

Third, the District Attorney's Office asserts that the information contained within this work product is confidential Internal Affairs records. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Tex. Gov't Code Ann. § 552.101. Sections 143.089(g) and 143.1214(b) of the Texas Local Government Code restricts the release of certain internal investigative files and "(g)" files maintained by law enforcement Internal Affairs divisions. *See* Tex. Loc. Gov't Code Ann. §§ 143.089(g), .1214(b). In order to compile information for the "*Brady List*," the District Attorney's Office makes specific requests to the Internal Affairs division of law enforcement agencies for their internal (g) file records. *See* Exhibit C. The information provided is not part of the officer's civil service file, but rather, is confidential internal records. *See* Exhibit C. Accordingly, all records containing or referencing information originating from the Internal Affairs division should be excepted from public disclosure pursuant to section 552.101 of the Texas Government Code in conjunction with sections 143.089(g) and

143.1214(b) of the Texas Local Government Code. *See In City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.— Austin 1993, writ denied).

For the reasons stated above, the Dallas County District Attorney's Office seeks a determination that the requested information is and will remain excepted from disclosure pursuant to sections 552.101 and 552.108 of the Texas Government Code. Furthermore, the State requests 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**  
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Enclosures