



June 14, 2002

Ms. Larissa T. Roeder  
Assistant District Attorney  
Dallas County  
133 North Industrial Boulevard, LB 19  
Dallas, Texas 75207-4399

OR2002-3231

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164288.

The Dallas County District Attorney's Office (the "district attorney") received a request for copies of eight categories of information pertaining to a specified person. You state that you do not maintain information that is responsive to request items one through four and six.<sup>1</sup> You claim, however, that the submitted information, which is responsive to request items five, seven, and eight, is excepted from disclosure pursuant to sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we address the eighth category of the request, which seeks any and all records regarding the named individual. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy when (1) the information is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685

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<sup>1</sup> We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

(Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, in addition to asking for information relating to specified case numbers, the requestor is partially requesting copies of unspecified records in which a specified individual is identified. Therefore, the request requires the district attorney to compile reports relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes arrests and investigations where the named individual is a suspect in a case. Accordingly, we conclude that, other than the specifically requested cases, the district attorney must withhold the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy to the extent that it reveals that the specified individual is a suspect, arrestee, or defendant in a case.

We now address the specifically requested case files. We note that Exhibit 3 constitutes a completed investigation made of, for, or by the district attorney. Section 552.022(a)(1) of the Government Code thus provides that this information is not excepted from required disclosure under the Public Information Act, except as provided by section 552.108 of the Government Code, or unless the information is expressly confidential under other law. *See Gov't Code* § 552.022(a). You claim that Exhibits 3 and 4 are excepted from disclosure as attorney work product pursuant to section 552.108. Section 552.108 provides in pertinent part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 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) [a]n 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 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.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(4), (b)(3), (c). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 applies to that information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Company v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993, orig. proceeding), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks all the information contained within the district attorney's litigation file on cause numbers F87-80076-SH and F90-29463, we conclude that the district attorney may withhold most of the information in Exhibits 3 and 4 from disclosure pursuant to section 552.108(a)(4) of the Government Code as attorney work product.

However, we note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the district attorney must release all basic information that is contained within each of these cause numbers to the requestor. *See* Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public).

In summary, other than the specifically requested cases, the district attorney must withhold the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy to the extent that it reveals that the specified individual is a suspect, arrestee, or defendant in a case. With the exception of all basic information that is contained within Exhibits 3 and 4, the district attorney may withhold these two exhibits from disclosure in their entirety pursuant to section 552.108(a)(4) of the Government Code as attorney work product. Based on our findings, we need not address your other claimed exceptions to disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

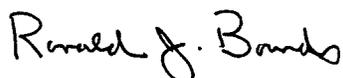
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 164288

Enc. Marked documents

cc: Ms. Cheryl B. Wattley  
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(w/o enclosures)