



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2004

Ms. Cheryl D. Holder  
Assistant District Attorney  
Dallas County  
133 North Industrial Blvd., LB-19  
Dallas, Texas 75207-4399

OR2004-2754

Dear Ms. Holder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198984.

The Dallas County District Attorney's Office (the "district attorney") received a request for "any and all public records related to the Jan. 16 indictment of [a named reserve deputy constable] on a charge of aggravated assault by a public servant." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that the submitted information as a whole consists of a completed investigation made of, for, or by the district attorney. Section 552.022(a)(1) of the Government Code provides that such information is not excepted from required disclosure under the Public Information Act (the "Act"), except as provided by section 552.108, or unless the information is expressly confidential under other law. Gov't Code

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

§ 552.022(a)(1). The district claims that the submitted information is excepted from disclosure under section 552.111. However, this exception is discretionary, and thus, does not constitute other law for the purposes of section 552.022. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.111), 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney may not withhold the submitted information under section 552.111 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld as provided by section 552.108, we will address your section 552.108 assertion for the submitted information.

Section 552.108 of the Government Code states in pertinent 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 [and]

(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.

(c) This section does not except from [required public disclosure] 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 claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *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 Co. v. Valdez*, 863 S.W.2d 458 (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. You state that the district attorney interprets this "request for 'any and all public records related to the January 16<sup>th</sup> indictment . . .'" as seeking access to the [d]istrict [a]ttorney's entire criminal litigation file on the above-referenced case." You assert that the "information requested and its organization into various subfiles represent the mental impressions, opinions, legal theories, and conclusions of the attorneys representing the State." Based on your representations and our review of the submitted information, we agree that most of the information at issue is excepted from disclosure under section 552.108(a)(4) and (b)(3) of the Government Code.<sup>2</sup>

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. 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). In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. *See* Open Records Decision No. 127 at 4 (1976). The district attorney must generally release this information in relation to the case that is the subject of the request, whether or not the information is found on the front page of an offense report.

We note, however, that you argue that portions of the basic information that must be released are excepted under sections 552.117 and 552.1175 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. We note,

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<sup>2</sup>Because our ruling is dispositive, we need not address your other claimed exceptions for this information. We also note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for section 552.117). In this instance, the submitted information is held by the district attorney as a law enforcement entity, not as an employer. Consequently, we find that the none of the basic information may be withheld under section 552.117(a)(2).

Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). However, you do not inform this office, nor does any of the submitted information indicate, whether the individual whose information is at issue is a licensed peace officer who has notified the district attorney of his election of confidentiality for this information in accordance with the above-cited subsections 552.1175(b)(1) and (2). *See, e.g.*, Open Records Decision No. 678 (2003) (concluding that county voter registrar was authorized to release voter information made confidential under section 552.1175 of Government Code to another governmental entity, but that transferred information would not be confidential in possession of transferee until recipient governmental entity receives a section 552.1175 notification). If the individual is currently a licensed peace officer who complies with section 552.1175(b), the district attorney must withhold that individual's home address and social security number.<sup>3</sup> If not, the district attorney may not withhold any basic information under section 552.1175.

In summary, we conclude that except for basic information, the district attorney may withhold the submitted information under section 552.108 of the Government Code. If the individual whose information is at issue is a licensed peace officer who complies with section 552.1175, then the district attorney must also withhold those portions of the basic information that reveal that individual's home address and social security number. If not,

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<sup>3</sup>We note that a complainant's telephone number is generally not basic information.

then this information, along with all other basic information, must be released pursuant to section 552.108(c). We note that the district attorney has the discretion to release all or part of the submitted information that is not otherwise confidential by law. Gov't Code § 552.007.

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 Dep't of Pub. 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,

A handwritten signature in cursive script, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 198984

Enc. Submitted documents

c: Ms. Holly Becka  
Staff Writer  
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(w/o enclosures)