



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2006

Mr. Robert Land
Assistant District Attorney
Frank Crowley Courts Building
133 North Industrial Blvd., LB-19
Dallas, Texas 75207-04399

OR2006-04413

Dear Mr. Land:

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# 248912.

The Dallas County District Attorney's Office (the "district attorney") received a request for information pertaining to a specified case. You claim that a portion of the requested information constitutes grand jury records that are not subject to the Act. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, and 552.147 of the Government Code, and Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted information.

Initially, we address your argument that certain responsive information consists of grand jury records that are not subject to the Act. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and are therefore not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). However, the fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such

information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513 (1988). Thus, to the extent that the district attorney has possession of the information submitted as Exhibit G as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. This decision does not address the public availability of any such information. To the extent that the district attorney does not have possession of the information submitted as Exhibit G as the grand jury's agent, the information is subject to the Act and must be released, unless it falls within an exception to public disclosure.

Next, we note that the submitted information is subject to required public disclosure under section 552.022 of the Government Code. Specifically, section 552.022(a)(1) provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information constitutes a completed investigation made of, for, or by the district attorney. Completed investigations must be released under section 552.022(a)(1) unless excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.111 of the Government Code is a discretionary exception that may be waived and, as such, does not constitute other law that makes information confidential for purposes of section 552.022(a)(1). *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, none of the remaining information at issue may be withheld under section 552.111 of the Government Code. You also claim that the remaining information at issue is protected under the attorney work product privilege on the basis of rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are other law within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). However, the Texas Rules of Civil Procedure only apply to "actions of a civil nature." TEX. R. CIV. P. 2. Accordingly, rule 192.5 does not apply to the criminal matter at issue here and none of this information may therefore be withheld on that basis. Because information subject to section 552.022 may be withheld under section 552.108, we will consider your argument under this exception for the remaining information at issue. In addition, sections 552.101, 552.130, and 552.147 constitute other law for the purposes of section 552.022, and we will consider the applicability of these sections to the remaining information at issue.

Section 552.108 of the Government Code provides in relevant part as follows:

(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]

....

(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), (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 id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). As you note, 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 (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.

In this instance, the requestor seeks all of the district attorney's records relating to a specified case involving a particular individual. Thus, we agree that this request encompasses the district attorney's entire case file for the referenced individual. You also assert that the submitted information was created by the district attorney in anticipation of litigation. Based on your representations and our review, we find that section 552.108(a)(4) is applicable to the remaining information at issue.

However, 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 at 185 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam). *See also* Open Records Decision No. 127 at 3-5 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(4) authorizes the district attorney to

withhold the remaining information at issue, we note that you have the discretion to release all or part of such information that is not otherwise confidential by law. Gov't Code § 552.007.

Lastly, section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Therefore, the district attorney must withhold the social security number of the arrestee contained in the submitted information under section 552.147.¹

In summary, we conclude that: (1) to the extent that the district attorney has possession of the information submitted as Exhibit G as an agent of the grand jury, such information is in the grand jury’s constructive possession and is not subject to disclosure under the Act; (2) with the exception of the basic offense and arrest information, which must be released, the district attorney may withhold the remaining information at issue under section 552.108(a)(4) of the Government Code; and (3) the arrestee’s social security number must be withheld under section 552.147 of the Government Code. As we are able to make these determinations, we need not address your remaining arguments against 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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*, 342 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 Office of the Attorney General 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. 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/krl

Ref: ID# 248912

Enc. Submitted documents

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(w/o enclosures)