ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2008

Ms. Cynthia R. Garza
Assistant District Attorney
Frank Crowley Courts Building
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2008-11421

Dear Ms. Garza:

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# 319624.

The Dallas County District Attorney's Office (the "district attorney") received a request for nine felony case files and one misdemeanor case file. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, 552.132, and 552.147 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the misdemeanor case file was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-06603 (2008). In that ruling, we concluded that as the district attorney had not submitted the misdemeanor case file for our review, it must be released pursuant to sections 552.301(e) and 552.302 of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district attorney must continue to rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based

[1]While you cite section 552.101 of the Government Code in conjunction with federal law for your argument to withhold social security numbers, the applicable section is section 552.147 of the Government Code.

have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note that the submitted information is subject to section 552.022(a)(1) of the Government Code, which 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 felony case files constitute completed investigations made by the district attorney. A completed investigation must be released under section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Although you seek to withhold the submitted information under sections 552.103 and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure that a governmental body may waive. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (discretionary exceptions generally). Accordingly, sections 552.103 and 552.111 are not other law that makes information confidential for purposes of section 552.022. Therefore, the district attorney may not withhold any of the submitted information under section 552.103 or section 552.111. The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure, which you also raise. 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 apply only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted information relates to criminal cases, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to any of the information at issue. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, 552.130, and 552.132, we will address these claims.

Section 552.108 of the Government Code provides 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:
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> . . .
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> (4) it is information that:
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> (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
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> (B) reflects the mental impressions or legal reasoning of an attorney representing the state.
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> (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.

Gov't Code § 552.108(a)(4), (b)(3). 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).

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. In this instance, the requestor seeks all of the district attorney's documents related to specific criminal files. We agree that this request is so broad as to encompass the district attorney's

entire files for the submitted felony cases. You assert that "[t]he files requested and their organization into various sub-files represents the mental impressions, opinions, legal theories, and conclusions of the attorneys representing the State in these cases." Based on your representations and our review of the submitted information, we agree that section 552.108(a)(4) is applicable to the submitted information.

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). 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, the district attorney may withhold the submitted information from disclosure based on section 552.108(a)(4) of the Government Code.[2]

We note that under section 552.147 of the Government Code, "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[3] Gov't Code § 552.147(a). The district attorney may withhold the arrestees' social security numbers under section 552.147 of the Government Code.

In summary, the district attorney must release the misdemeanor case file in accordance with our prior ruling in Open Records Letter No. 2008-06603. With the exception of basic information, the district attorney may withhold the submitted felony cases under section 552.108(a)(4) of the Government Code. However, in releasing basic information, the district attorney may withhold the arrestees' social security numbers under section 552.147 of the Government Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of

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[2]As we are able to make this determination, we do not address your claims under sections 552.101, 552.130, and 552.132 of the Government Code.

[3]We further 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. Gov't Code § 552.147(b).

such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 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 challenge 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 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,

Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 319624

Enc. Submitted documents

c: Ms. Janice Scanlan
Bracewell & Giuliani
1445 Ross Avenue, Suite 3800
Dallas, Texas 75202-2711
(w/o enclosures)