



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2009

Mr. Eric Stoebner  
Assistant District Attorney  
Dallas County Criminal District Attorney's Office  
133 North Industrial Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2009-05821

Dear Mr. Stoebner:

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# 341618.

The Dallas County District Attorney's Office (the "district attorney") received a request for all information pertaining to a specified case. You state that the district attorney will release some of the requested information. You claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 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 information in Exhibit D is not responsive to the instant request for information because it was created after the request for information was received. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney is not required to release this information, which we have marked as non-responsive, in response to this request.

---

<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.

Next, we note the submitted information is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). The submitted case file constitutes a completed investigation made by the district attorney, and therefore must be released unless excepted from disclosure under section 552.108 or confidential under other law. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108. Section 552.103 is a discretionary exception to public disclosure that protects a governmental body’s interests and may be waived. *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 No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not “other law” that makes information confidential for the purposes of section 552.022. Therefore, the district attorney may not withhold the submitted information under section 552.103. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101 and 552.108, we will address these claims for the submitted information.

Next, we note Exhibits J and L consist of court-filed documents. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under other law. You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body’s interests and is, therefore, not “other law” for purposes of section 552.022(a)(17). *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Therefore, the district attorney may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As you raise no further exceptions to the disclosure of Exhibit L, it must be released. We note, however, that Exhibit J contains information subject to section 552.101 of the Government Code. This section is other law for section 552.022 purposes; therefore, we will address the applicability of this exception to the submitted information in Exhibit J.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). The requestor states he is the brother of the individual at issue and is requesting the information on behalf of the family. We are unable to

determine whether or not the requestor is acting as the individual's authorized representative. Thus, if the district attorney determines the requestor is the authorized representative of the individual whose fingerprints are at issue, the requestor has a right of access to the biometric information under section 560.002(1)(A) and it must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If, however, the district attorney determines the requestor is not the authorized representative of the individual whose information is at issue, the district attorney must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.108 of the Government Code provides in pertinent part:

(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) represents the mental impressions or legal reasoning of an attorney representing the state.

*Id.* § 552.108(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 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." *Id.* at 380 (quoting *Nat'l Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). You state that the requestor seeks access to the district attorney's entire file for a specified criminal case. Based on your representations and our review of the submitted information, we conclude that section 552.108(b)(3) of the Government Code is applicable in this instance.

We note, 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 Co. 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*). Thus, with the exception of basic information, which you state will be released, the district attorney may withhold the information not subject to section 552.022(a)(17) from disclosure pursuant to section 552.108(b)(3) of the Government Code.

In summary: (1) if the district attorney determines the requestor is not the authorized representative of the individual whose information is at issue, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) the district attorney must release Exhibits J and L pursuant to section 552.022(a)(17) of the Government Code; and (3) with the exception of the basic information, the district attorney may withhold the remaining information under section 552.108(b)(3) of the Government Code.<sup>2</sup>

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

Ref: ID#341618

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>As our ruling under section 552.108 is dispositive, we need not address your remaining argument against disclosure.