



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Ms. Jacqueline Cullom Murphy
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2009-06055

Dear Ms. Murphy:

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# 342160.

The Bexar County Criminal District Attorney's Office (the "district attorney") received a request for a specified prosecution file, as well as the name of the prosecutor who worked on the case at issue. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a court-filed document that is subject to section 552.022 of the Government Code. Section 552.022 provides that information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, the court-filed document must be released to the requestor, unless it is confidential under other law. Although you assert this information is excepted under section 552.108 of the Government Code, this section is a discretionary exception within the Act and not "other law" that makes information confidential. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, the court-filed document, which we have marked, may not be withheld under section 552.108, and must be released to the requestor.

We will now address your arguments regarding the information not subject to section 552.022. Section 552.108 of the Government Code provides in relevant 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:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; [or]

(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]

Gov't Code §§ 552.108(a)(2), 552.108(a)(4). 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). Further, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the information in Exhibit "D" relates to a criminal prosecution conducted by the district attorney, in which the criminal charges were dismissed for lack of evidence. Based on your representation and our review of the submitted information, we conclude that section 552.108(a)(2) is applicable to the information in Exhibit "D".

However, section 552.108 of the Government Code 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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the district attorney may withhold the information in Exhibit “D” under section 552.108(a)(2).

Next, you inform us that Exhibit “C” consists of a document that “reflects the mental impressions or legal reasoning of an attorney representing the state.” Based on your representations and our review, we conclude that the district attorney may withhold the information in Exhibit “C” under section 552.108(a)(4) of the Government Code.¹

In summary, (1) the district attorney must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code; (2) with the exception of basic information, which must be released to the requestor, the district attorney may withhold the information in Exhibit “D” under section 552.108(a)(2) of the Government Code; and (3) the district attorney may withhold the information in Exhibit “C” under section 552.108(a)(4) of the Government Code.

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, 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 342160

Enc. Submitted documents

c: Requestor
(w/o enclosures)