



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2009

Mr. Michael J. Sandlin
Assistant District Attorney
Frank Crowley Courts Building
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2009-06549

Dear Mr. Sandlin:

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# 343171.

The Dallas County District Attorney (the "district attorney") received a request for information related to a specified case and all records pertaining to three named individuals. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the district attorney asked the requestor for clarification regarding her request for all records pertaining to the three named individuals. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You inform us the district attorney has yet to receive a response to this request for clarification. Therefore, the district attorney is not required to release any information that might be

¹While you also raise section 552.147 of the Government Code, we note section 552.147(b) 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.

responsive to the request for all records pertaining to the three named individuals at this time. But if the requestor responds to the clarification request, the district attorney must seek a ruling from this office before withholding any responsive information from the requestor. *See* Open Records Decision No. 663 (1999) (ten-business-day deadline tolled while governmental body awaits clarification).

We next note that a portion of the information related to the specified case appears to have been obtained pursuant to a grand jury subpoena. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *Id.* at 3. Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, to the extent the information at issue is in the custody of the district attorney as an agent of the grand jury, it is not subject to disclosure under the Act. *Id.* at 4. However, to the extent the information at issue is not in the custody of the district attorney as an agent of the grand jury, it is subject to disclosure under the Act. In that event, we address your argument for this information, as well as for the remaining submitted information.

Next, we note the information at issue contains documents filed with a court, which 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the district attorney may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. You also raise sections 552.101 and 552.130 of the Government Code, which are "other law" for purposes of section 552.022. We note, however, that while raise section 552.101 in conjunction with common-law privacy, information that has been filed with a court is not protected by common-law privacy.² *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the district attorney may not withhold the court-filed documents based on section 552.101 of the Government Code in conjunction with common-law privacy. However, we will address your arguments under

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy.

section 552.101 in conjunction with constitutional privacy and section 552.130 of the Government Code for the court-filed documents.

Section 552.101 encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After reviewing the information at issue, we find that no portion of the court-filed documents falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the district attorney may not withhold any of the information subject to section 552.022 under section 552.101 in conjunction with constitutional privacy.

Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Upon review, we find the court-filed documents do not contain Texas motor vehicle record information that is subject to section 552.130. Therefore, the district attorney may not withhold any information subject to section 552.022 under section 552.130. As you raise no other arguments against the disclosure of the information subject to section 552.022, it must be released.

We next address your argument under section 552.108 for the information not subject to section 552.022. Section 552.108 provides in 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) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 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 the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), 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 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 "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 contend the request "essentially encompasses all documents in this case." You further state the submitted prosecution documents consist of "material prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation." Based on these representations and our review, we agree, in accordance with the holding in *Curry*, that the remaining information is subject to section 552.108(a)(4).

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, the district attorney may withhold the information not subject to section 552.022 under section 552.108(a)(4) of the Government Code.³

In summary, to the extent any of the information responsive to the request for information relating to the specified case is in the custody of the district attorney as an agent of the grand jury, it is not subject to disclosure under the Act. The district attorney must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the district attorney may withhold the remaining information under section 552.108 of the Government Code.

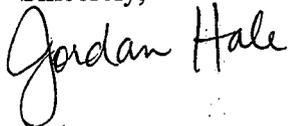
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 343171

Enc. Submitted documents

cc: Requestor
(w/o enclosures)