



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2009

Ms. Claire Yancey
Assistant District Attorney
Denton County Criminal District Attorney
P.O. Box 2850
Denton, Texas 76202

OR2009-08832

Dear Ms. Yancey:

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# 347403.

The Denton County Criminal District Attorney (the "district attorney") received a request for information related to a specified case. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's argument that the district attorney failed to comply with the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Additionally, within fifteen business days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). The

district attorney states that it received the request on April 6, 2009, and was closed on April 10, 2009. Thus, the ten and fifteen business day deadlines for this request were April 21, 2009, and April 28, 2009, respectively. By letter postmarked April 20, 2009, the district attorney submitted a request for a ruling to this office and claimed seven specific exceptions. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). By letter postmarked April 27, 2009, the district attorney submitted a brief explaining why three of the previously asserted exceptions apply, a copy of the written request for information, evidence of the date the district attorney received the written request, and a copy of the specific information requested. Thus, we conclude that the district attorney fully complied with all of the procedural requirements of section 552.301.

We next note that much of the submitted information was the subject of two previous requests, as a result of which this office issued Open Records Letter Nos. 2003-8127 (2003) and 2007-01082 (2007). In Open Records Letter No. 2003-8127, we determined that the district attorney: (1) must release the submitted arrest warrant and supporting affidavit in accordance with article 15.26 of the Code of Criminal Procedure, and (2) may withhold the remainder of the submitted information, with the exception of basic information, under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2007-01082, we determined that the district attorney: (1) must continue to rely on Open Records Letter No.2003-8127 as a previous determination; (2) pursuant to section 552.022 of the Government Code, must release documents filed with a court, except for fingerprints that must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; and (3) may withhold the remainder of the submitted information, with the exception of basic information, under section 552.108(a)(1) of the Government Code. We conclude that the district attorney must continue to rely upon these two rulings with regard to the previously submitted information subject to article 15.26 of the Code of Criminal Procedure, section 552.022 of the Government Code, and section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based 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). However, the facts or circumstances on which the previous rulings were based have changed with regard to the information the district attorney previously withheld under section 552.108(a)(1) of the Government Code. Because the underlying criminal case is no longer active, the district attorney may no longer rely on Open Records Letter Nos. 2003-8127 and 2007-01082 with regard to the information previously subject to section 552.108(a)(1). Accordingly, we will consider the district attorney's arguments against disclosure of this information, as well as its arguments against disclosure of the submitted information not subject to the previous determinations.

The remaining information at issue includes a court-filed "Judgment of Conviction and Sentence." A document that has been filed with a court is expressly public under section 552.022 of the Government Code and must be released unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). You assert that this document is excepted from disclosure under section 552.108 of the Government Code; however, this section is a discretionary exception that protects a governmental body's interests and which may be waived by the governmental body. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) governmental body may waive section 552.108). As such, section 552.108 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the district attorney may not withhold the submitted "Judgment of Conviction and Sentence," which we have marked, under section 552.108.

We note, however, that this document contains a fingerprint. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the district attorney must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.¹

The document we have marked under section 552.022 also contains a Texas driver's license number. Section 552.130(a)(1) of the Government Code 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[.]" *Id.* § 552.130(a)(1).² Accordingly, the district attorney must withhold the Texas driver's license number we have marked pursuant to section 552.130(a)(1). The district attorney must release the remaining information in the document we have marked under section 552.022.

¹Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, including chapter 560 of the Government Code. The Office of the Attorney General will raise a mandatory exception, such as section 552.101, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Section 552.130 is also a mandatory exception that the Office of the Attorney General will raise on behalf of a governmental body. *See* ORD Nos. 481, 480, 470.

We next address your arguments under section 552.108 with regard to the remaining information at issue. Section 552.108(a)(4) provides:

(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.

Id. § 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 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 "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 state that the information at issue consists of the prosecutor's entire litigation file for the specified case. You further state that this information consists of "information, internal records, and notations prepared by the [district attorney] in the course of preparing for criminal litigation . . . which depict the independent thoughts and judgments made by the [district attorney.]" Based on these representations and our review, we agree, in accordance with the holding in *Curry*, that the district attorney may withhold the remaining information at issue under section 552.108(a)(4) of the Government Code.³

In summary, the district attorney: (1) must continue to rely upon Open Records Letter Nos. 2003-8127 and 2007-01082 with regard to the previously submitted information subject to article 15.26 of the Code of Criminal Procedure, section 552.022 of the Government Code,

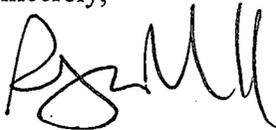
³Although section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime, *see* Gov't Code § 552.108(c), the district attorney has previously released basic information from this file pursuant to our rulings in Open Records Letter Nos. 2003-8127 and 2007-01082.

and section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) must release the document we have marked under section 552.022(a)(17) of the Government Code, except the portions thereof we have marked for exception, namely: (a) the marked fingerprint information, which the district attorney must withhold under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, and (b) the marked Texas driver's license number, which the district attorney must withhold under section 552.130 of the Government Code; and (3) may withhold the remaining information at issue 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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 347403

Enc. Submitted documents

cc: Requestor
(w/o enclosures)