



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2009

Mr. Charles C. Dickerson
Special Assistant District Attorney
Criminal District Attorney, Panola County
Panola County Judicial Center #301
108 South Sycamore
Carthage, Texas 75633

OR2009-09482

Dear Mr. Dickerson:

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# 348434.

The Criminal District Attorney of Panola County (the "district attorney") received two requests from the same requestor for information presented to the grand jury regarding a specified indictment. You state some information has been released. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received 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 note that you have redacted driver's license numbers and a social security number from the information already released to the requestor. 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. *See* Gov't Code § 552.147(b). However, you have also redacted information

subject to section 552.130 of the Government Code.¹ Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See id.* §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, that the district attorney is authorized to withhold the redacted information, with the exception of social security numbers subject to section 552.147, without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. The failure to provide this office with requested information is a violation of section 552.301 of the Government Code because it deprives us of the ability to determine whether information may be withheld. *See Gov't Code* §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302. In such instances, this office has no alternative other than to order that the redacted information be released. However, in this instance, because we can generally discern the nature of the redacted information, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district attorney should refrain from redacting any information that it submits to this office in seeking an open records ruling.

Further, we note sections 552.130 and 552.147 protect personal privacy. In this instance, most of the information you redacted belongs to the requestor. As such, the requestor has a right of access to his driver's license information and social security number under section 552.023 of the Government Code. *See id.* § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual.) Thus, the requestor's driver's license information and social security number may not be withheld in this instance. Further, we note that information relating to a driver's license issued by another state or country may not be withheld under section 552.130. *See Gov't Code* § 552.130. Therefore, none of the information you redacted from the released information may be withheld from this requestor.

You contend that all of the submitted information is excepted from disclosure under section 552.108 of the Government Code, which provides in part:

¹Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Gov't Code* § 552.130(a)(1).

(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.* §§ .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." *Id.* 873 S.W.2d at 380. As we understand your argument, you contend that the instant request for information essentially encompasses the district attorney's entire case file concerning the named individual. You assert that the information at issue reflects the mental impressions or legal reasoning of an attorney representing the state. Based on these representations and our review, we agree that section 552.108(a)(4) of the Government Code is applicable to the information at issue. Therefore, the district attorney may withhold the submitted information under section 552.108(a)(4) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'M E' followed by a stylized flourish.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 348434

Enc. Submitted documents

c: Requestor
(w/o enclosures)