



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2009

Ms. Myrna S. Reingold  
Staff Attorney  
Galveston County Legal Department  
County Courthouse  
722 Moody, 5<sup>th</sup> Floor  
Galveston, Texas 77550-2317

OR2009-11005

Dear Ms. Reingold:

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# 351705.

The Galveston County Criminal District Attorney (the "district attorney") received a request for information relating to three specified cases. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that some of the submitted documents are records of the judiciary, which are not subject to the Act. The Act generally requires the disclosure of information maintained by a "governmental body," but the judiciary is expressly excluded from the requirements of the Act. See Gov't Code § 552.003(1)(B). You have marked documents in the submitted information as records of the grand jury that are not subject to the Act. However, you have not explained how these records, which consist of an indictment, true bill, and the district attorney's notes, are collected, assembled, or maintained on behalf of the

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<sup>1</sup>We note that 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.

judiciary. See *id.* § 552.301(e)(1)(A) (providing that it is governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released); *see generally* Open Records Decision No. 513 (1988) (discussing the type information considered to be in the actual or constructive possession of the grand jury and not subject to the Act). Therefore, you have not demonstrated that this information is maintained by the district attorney on behalf of the judiciary and, consequently, we conclude that this information is subject to the Act.

Next, we note that a driver's license number has been redacted from the submitted information. 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* Gov't Code §§ 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 without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we can discern the nature of the redacted information; thus, 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 for which it is not authorized.

We next note that the submitted information contains court-filed documents, which we have marked, that are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is 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 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Accordingly, the district attorney may not withhold the court-filed documents under section 552.108 of the Government Code. As you raise no other exception for this information, it must be released.

You assert that the remaining information is excepted from public disclosure under section 552.108 of the Government Code, which 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. We understand you to contend that the instant request for information encompasses the district attorney's entire case file concerning the cases at issue. You further indicate that the submitted information is protected attorney work product and necessarily reveals the district attorney's thought processes concerning the prosecution of the case. Based on these representations and our review, we agree, in accordance with the holding in *Curry*, that the remaining information reflects the mental impressions or legal reasoning of an attorney representing the state. Therefore, we conclude that section 552.108(a)(4) is generally applicable to the remaining information.

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 remaining information under section 552.108(a)(4) of the Government Code.

In summary, the district attorney must release the information that is subject to section 552.022(a)(17) of the Government Code. With the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we do 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](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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/dls

Ref: ID# 351705

Enc. Submitted documents

c: Requestor  
(w/o enclosures)