



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2010

Ms. Moira Schilke
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2010-02396

Dear Ms. Schilke:

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# 370428.

The Denton County Criminal District Attorney (the "district attorney") received a request for information pertaining to a specified case. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Initially, we note that some of the submitted information 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

¹Although you also raised sections 552.103, 552.107, and 552.111 of the Government Code, you have not submitted any arguments regarding the applicability of these exceptions nor have you identified any information you seek to withhold under these exceptions. Therefore, we assume you no longer assert these exceptions to disclosure. *See* Gov't Code §§ 552.301, .302.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 arguments for this information, as well as for the remaining submitted information.

Next, we note the submitted information contains documents filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See* Gov't Code 552.022(a)(17). Such information must be released unless it is expressly confidential under "other law." *Id.* You claim the court-filed documents are excepted from disclosure under section 552.108(a)(4) 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. However, we note that sections 552.101, 552.130, and 552.147 are "other law" for purposes of section 552.022. Accordingly, we will address your arguments under these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 560.003 of the Government Code provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the district attorney must withhold the fingerprint information we have marked in the marked court-filed documents under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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[.]" *Id.* § 552.130. Accordingly, the

district attorney must withhold the Texas motor vehicle record information we have marked in the marked court-filed documents pursuant to section 552.130 of the Government Code.³

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁴ *Id.* § 552.147. Upon review, we find the district attorney may withhold the social security numbers contained in the marked court-filed documents pursuant to section 552.147 of the Government Code. As you have raised no other exceptions to disclosure of the remaining information in the marked court-filed documents, this information must be released pursuant to section 552.022(a)(17) of the Government Code.

We next address your argument under section 552.108(a)(4) of the Government Code for the remaining information not subject to section 552.022. 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

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including biometric identifiers under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and Texas driver’s license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note that section 552.147(b) authorizes a government 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. Gov’t Code § 552.147(b).

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 indicate the request for information essentially encompasses the entire prosecution file for the case at issue. You state the submitted prosecution file consists of "material prepared by an attorney representing the [state] in the course of preparing for criminal litigation." Further, you assert the information at issue "reflects the prosecutor's mental impressions." 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 remaining information not subject to section 552.022 under section 552.108(a)(4) of the Government Code.⁵

In summary, to the extent any of the submitted information 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 withhold information we have marked in the marked court-filed documents under (1) section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and (2) section 552.130 of the Government Code. The district attorney may withhold the social security numbers contained in the marked court-filed documents pursuant to section 552.147 of the Government Code. The district attorney must release the remaining marked court-filed documents pursuant 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 of the Government Code.

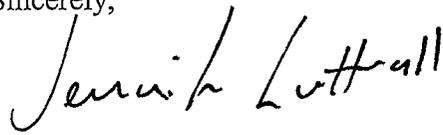
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

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, toll-free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the typed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 370428

Enc. Submitted documents

c: Requestor
(w/o enclosures)