



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2010

Ms. Caroline E. Cho  
Assistant County Attorney  
Williamson County  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

OR2010-09832

Dear Ms. Cho:

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# 385143.

The Williamson County Attorney's Office (the "county attorney") received two requests from the same requestor for information pertaining to a specified case. The first request asks for a video, 9-1-1 recording, alcohol/breathalyzer test results, and witness statements. The second request asks for nine categories of information regarding the specified case, including the county attorney's investigation file. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the submitted DVD are not responsive to the instant requests for information because they do not pertain to the specified case. This ruling does not address the public availability of any information that is not responsive to the requests and the county attorney is not required to release that information in response to the requests.

Next, we note the submitted information contains CR-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has provided the county attorney with the requisite pieces of information specified by the statute. Accordingly, the county attorney must release the submitted CR-3

accident report forms in their entirety pursuant to section 550.065(c)(4) of the Transportation Code.<sup>1</sup>

You seek to withhold the remaining information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. These sections provide in relevant parts as follows:

(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) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). 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 "the decision as to what to include in [the file], necessarily reveals the attorney's

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<sup>1</sup>As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

thought processes concerning the prosecution or defense of the case.” *Id.* at 380 (quoting *Nat’l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). Accordingly, the court concluded in such an instance, the district attorney’s entire litigation file is privileged attorney work product.

You inform this office the county attorney’s “investigation file” is its “litigation file.” You contend the requests for information essentially encompass the entire prosecution file for the case at issue and argue release of the file would reveal the mental impressions or legal reasoning of prosecutors. Upon review, we disagree the requestor has sought the entire prosecution file in his first request - rather, the requestor has specifically itemized the precise information held by the county attorney that he seeks. Thus, we conclude the first request is not a request for the county attorney’s entire case file. Accordingly, the county attorney may not withhold any information responsive to the first request pursuant to *Curry*. Additionally, we find a prosecutor did not prepare the information responsive to the first request, which consists of a witness statement and dash cam video, and you have failed to demonstrate such information reveals the mental impressions or legal theories of a prosecutor. Therefore, the county attorney may not withhold the information at issue under subsections 552.108(a)(4) and (b)(3) of the Government Code. However, based on your representations and our review, we agree the second request is so broad as to encompass the county attorney’s entire file for the case at issue. Thus, in accordance with the holding in *Curry*, we agree the information responsive to the second request is subject to section 552.108(a)(4).<sup>2</sup>

We note 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). Section 552.108(c) refers to the basic front-page 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* 531 S.W.2d at 186-88. The county attorney must release basic information even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The county attorney may generally withhold the information responsive to the second request under section 552.108(a)(4) of the Government Code.

However, section 552.007 of the Government Code prohibits selective disclosure of information. Thus, a governmental body cannot withhold information from a requestor that it has voluntarily made available to another member of the public unless the information is confidential by law. *See* Gov’t Code § 552.007(b). As a general rule, therefore, if a governmental body releases information to any member of the public, the Act’s exceptions to disclosure are waived unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Open Records Decision Nos. 490

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<sup>2</sup>As our ruling is dispositive, we need not address your section 552.108(b)(3) argument against disclosure.

(1988), 400 (1983). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, because the county attorney may not withhold any information that is responsive to the first request under section 552.108, the county attorney likewise may not withhold this same information to the extent it is responsive to the second request. *See* Gov't Code § 552.007(b). Accordingly, with the exception of information responsive to the first request and basic information, the county attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.

In summary, the county attorney must release the submitted CR-3 accident report forms in their entirety pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of information responsive to the first request and basic information, the county attorney may withhold the remaining responsive information under section 552.108(a)(4) of the Government Code.<sup>3</sup>

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

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>We note the information being released contains a social security number subject to section 552.147 of the Government Code. 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. Gov't Code § 552.147(b).

Ref: ID# 385143

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)