



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2010

Ms. Paula M. Rosales  
Assistant District Attorney  
Dallas County  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2010-10475

Dear Ms. Rosales:

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# 386508.

The Dallas County District Attorney's Office (the "district attorney") received a request for the complete file, including specified items, regarding a specified case involving a named individual. You state the district attorney does not have any information responsive to some of the specified items in the request.<sup>1</sup> You claim the submitted litigation file information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.1325, 552.130, and 552.147 of the Government Code, and privileged under rule 192.5 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information is a completed investigation made by the district attorney. A completed investigation must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(1). *See* Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney may not withhold any of the submitted information under section 552.111 of the Government Code. The attorney work product privilege is also found at rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to any of the submitted information. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, 552.1325, 552.130, and 552.147, we will consider your claims under these sections for the submitted information.

Section 552.108 of the Government Code 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). Furthermore, 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. You state the submitted documents constitute the district attorney's entire litigation file with respect to the case specified in the request. Based on your representations and our review, we agree, in accordance with the holding in *Curry*, the submitted litigation file documents reflect the mental impressions or legal reasoning of an attorney representing the state. Therefore, we conclude the submitted information is subject to section 552.108(a)(4).<sup>2</sup>

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), and includes the identity of the complainant and a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. You assert the victims' and witnesses' identities should be withheld from the basic information. We note, however, basic information does not include witness-identifying information or victim-identifying information, unless a victim is also a complainant. In this instance, because the victims are also the complainants, the victims' identifying information is part of basic information. You claim, however, the complainants' identifying information is excepted from disclosure under sections 552.101 and 552.1325 of the Government Code.

Although you generally assert the victims' identifying information is excepted under section 552.101 in conjunction with section 508.313 of the Government Code and under section 552.1325, you have not provided any arguments explaining how these exceptions apply to the information at issue.<sup>3</sup> Furthermore, we note section 508.313 makes confidential certain information maintained by the Texas Department of Criminal Justice's Board of

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

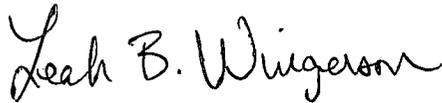
<sup>3</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 508.313.

Pardons and Paroles pertaining to parolees and releasees, while section 552.1325 makes confidential certain victim-identifying information contained in or used in preparing a victim impact statement. Because you have not explained, and we are unable to discern, how either of these provisions applies to the basic information contained in the submitted litigation file, we find you have failed to demonstrate the applicability of sections 508.313 and 552.1325 to the victims' identifying information contained in the basic information. Therefore, with the exception of basic information, the district attorney may withhold the submitted information under section 552.108(a)(4) of the Government Code.<sup>4</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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 386508

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note basic information includes an arrestee's social security number. 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.