



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2010

Ms. Claire Yancey
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2010-11486

Dear Ms. Yancey:

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# 388584.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for all information pertaining to a specified case as well as any information pertaining to a named individual. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code, which states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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:

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

¹Although you raised sections 552.107 and 552.111 of the Government Code in your initial brief, you make no arguments explaining the applicability of these exceptions to the submitted information. Therefore, we assume you have withdrawn these exceptions.

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you raise section 552.103 of the Government Code for this information, section 552.103 is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Morning News*, 4 S.W.3d 469, 475-76; Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Consequently, the submitted information may not be withheld under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.108 and 552.130, we will consider your arguments for these exceptions.

We next address your argument under section 552.108(a)(4) of the Government Code for the submitted information. 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.

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. You indicate the request for information encompasses the entire prosecution file for the case at issue. You state the submitted prosecution file consists of "material

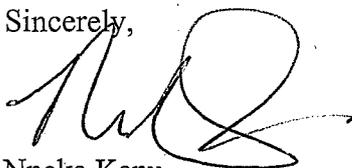
prepared by an attorney representing the [state] in the course of preparing for criminal litigation.” Further, you assert the information at issue “reflects the prosecutor’s mental impressions.” Based on these representations and our review, we agree, in accordance with the holding in *Curry*, that the submitted 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, which must be released, the district attorney may withhold the submitted information under section 552.108(a)(4) of the Government Code.²

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

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 388584

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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