



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2010

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

OR2010-13930

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#393294.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for Cause Nos. CR-2010-01856-B, CR-2010-01854-B, CR-2010-01565-B, and CR-2010-01564-B. You claim that the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.108(a)(4) of the Government Code provides:

¹Although you initially raised sections 552.101, 552.103, 552.107, and 552.111 of the Government Code, you did not submit to this office written comments stating the reasons why these sections would allow the information to be withheld. Thus, the district attorney has waived its claims under sections 552.103, 552.107, and 552.111. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general). Further, the district attorney has not demonstrated that any of the submitted information is confidential for purposes of section 552.101. *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.

(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 essentially encompasses the entire prosecution file for the cases at issue. You state the submitted prosecution files consist of material prepared by the Criminal District 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 requested 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 information at issue under section 552.108(a)(4) of the Government Code.

We note basic information includes an arrestee's social security number. You seek to withhold social security numbers under section 552.147 of the Government Code. 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.³ Gov't Code § 552.147(a). Upon review, we agree the district attorney may withhold the arrestee's social security number under section 552.147 of the Government Code. The remaining basic information must be released.

In summary, with the exception of basic information, the district attorney may withhold the information at issue under section 552.108(a)(1) of the Government Code.⁴ In releasing the basic information, the district attorney may withhold the arrestee's social security number under section 552.147 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID#393294

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that 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.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.