



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2010

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

OR2010-17092

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# 399684.

The Dallas County District Attorney's Office (the "district attorney") received a request for information pertaining to Cause No. F00-54953. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.1325, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we must address the district attorney's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The district attorney received the request for information on August 24, 2010, but did not raise the common-law informer's privilege until September 15, 2010. *See* Gov't Code § 552.301(b). Thus, the district attorney failed to

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<sup>1</sup>We note the submitted information contains a 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.

comply with the procedural requirements mandated by section 552.301 in raising the informer's privilege.<sup>2</sup>

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). The common-law informer's privilege is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 522 (1989) (discretionary exceptions in general), 549 at 6 (1990) (purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect third party). Thus, the district attorney's claim under the common-law informer's privilege is not a compelling reason to overcome the presumption of openness. Therefore, the district attorney may not withhold any of the submitted information pursuant to the informer's privilege.

We next note the submitted information contains documents filed with the court, which we have marked. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Although you assert these documents are excepted under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, section 552.108 does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the district attorney may not withhold this information under section 552.108. In addition, although you also argue the court-filed document should be withheld on the basis of common law privacy, information that is otherwise confidential under common-law privacy may not be withheld in a court-filed document. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (sexual assault victim's privacy right not violated by release of information in public court document). You also assert this information is excepted under section 552.101 in conjunction with constitutional privacy, section 552.130, and section 552.137 of the Government. Section 552.101 in conjunction with constitutional privacy, section 552.130, and section 552.137 constitute other law for purposes of section 552.022; therefore, we will consider whether these sections require you to withhold any of the information subject to section 552.022.

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<sup>2</sup>We note the district attorney timely raised the remaining asserted 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.” This section encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5; see *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). After review of the information subject to section 552.022, we find it does not contain information that is confidential under constitutional privacy; therefore, the district attorney may not withhold it on that ground.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.<sup>3</sup> Gov’t Code § 552.130(a)(1), (2). The information subject to section 552.022 does not contain Texas motor vehicle record information; therefore, the district attorney may not withhold the information at issue under section 552.130.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See *id.* § 552.137(a)-(c). The information subject to section 552.022 does not contain an e-mail address of a member of the public; therefore, the district attorney may not withhold the information at issue under section 552.137.

You assert the remaining information is excepted under section 552.108 of the Government Code, which provides in part the following:

- (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:

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<sup>3</sup>Although you assert some of the information is excepted from disclosure under section 552.130 in conjunction with section 552.101 of the Government Code, we note that the exceptions in the Act are not law that makes information confidential for purposes of section 552.101.

(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.

Gov't Code § 552.108(a)(4). Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You contend the remaining information was prepared by assistant district attorneys in anticipation of or in preparation for trial. Thus, you assert the information at issue reflects the mental impressions and legal reasoning of the assistant district attorney. Based upon your representations, we find section 552.108(a)(4) is applicable to the information at issue.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the remaining information from disclosure based on section 552.108(a)(4).<sup>4</sup>

To conclude, the district attorney must release the information we have marked pursuant to section 552.022 of the Government Code and the basic information in the remaining documents. The district attorney may withhold the remaining information under section 552.108(a)(4) 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

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<sup>4</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tp

Ref: ID# 399684

Enc. Submitted documents

c: Requestor  
(w/o enclosures)