



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2010

Ms. J. Macklin Milligan
Assistant District Attorney
Harris County District Attorney's Office
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2010-17622

Dear Ms. Milligan:

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# 401464.

The Harris County District Attorney's Office (the "district attorney") received three requests from the same requestor for all documents pertaining to three specified cause numbers. You claim a portion of the submitted information is not subject to the Act. You also claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.110, and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state that the information in Appendix B-4 is held by the district attorney on behalf of a grand jury. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411, 398 (1983); *but see* ORD 513 at 4 (defining limits of judiciary exclusion). Based on your representation that Appendix B-4 consists of records in the custody of the district attorney as agent of the grand jury, we conclude these documents are not subject to

the Act. Thus, this ruling does not address the public availability of Appendix B-4 and it need not be released in response to these requests for information.¹

You claim that the remaining information is excepted under section 552.108(a)(4) of the Government Code, which 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that 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 that "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. The present request seeks all information pertaining to three specified cause numbers. You contend that the instant request is for the entire prosecution files pertaining to these cause numbers. We understand you to assert that release of the remaining information would reveal the mental impressions or legal reasoning of prosecutors in the district attorney's office. Based on your representations and our review, we conclude that section 552.108(a)(4) is generally applicable to the remaining information.

We note that 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). The district attorney must release basic

¹As we are able to make this determination, we need not address your arguments against the disclosure of the submitted grand jury records.

information, including a detailed description of the offense, 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*). Accordingly, with the exception of basic information, which must be released, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.²

In summary, Appendix B-4 consists of records of the judiciary that are not subject to disclosure under the Act. With the exception of basic information, which must be released, 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 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/tp

Ref: ID# 401464

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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