



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2010

Mr. Scott A. Durfee  
Assistant General Counsel  
Harris County District Attorney's Office  
1201 Franklin, Suite 600  
Houston, Texas 77002

OR2010-17876

Dear Mr. Durfee:

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# 401269.

The Harris County District Attorney's Office (the "district attorney") received a request for all records pertaining to a named individual with regard to a specified case. You claim the submitted litigation file is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also notified the named individual of this request for information and of his right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information, some of which is a representative sample.<sup>1</sup>

Initially, we note the submitted information contains agreed setting records and a statutory warning signed by a judge. These documents are subject to section 552.022(a)(17) of the Government Code and must be released unless they are expressly confidential under other law. *See id.* § 552.022(a)(17). You claim the documents are excepted from disclosure under

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). As such, section 552.108 is not "other law" for purposes of section 552.022(a)(17). Consequently, the district attorney may not withhold the agreed setting records and statutory warning, which we have marked, under section 552.108 of the Government Code. As you have claimed no other exceptions to disclosure for these documents, they must be released.

You claim the remaining information is excepted under section 552.108 of the Government Code, which 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 indicate the remaining information constitutes the district attorney's entire litigation file with respect to the individual and case specified in the request. Based on your representations and our review, we agree, in accordance with the holding in *Curry*, the requested litigation file documents reflect the mental impressions or legal reasoning of

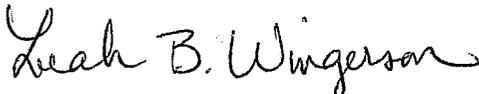
an attorney representing the state. Therefore, we conclude the remaining requested information is subject to section 552.108(a)(4).<sup>2</sup>

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). 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 remaining requested 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](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# 401269

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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