



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 23, 2010

Ms. J. Macklin Milligan
Assistant District Attorney
Office of the General Counsel
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2010-19348

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# 404317.

The Harris County District Attorney (the "district attorney") received a request for all information relating to a specified cause number. You claim the district attorney need not comply with the request pursuant to section 552.028 of the Government Code. Alternatively, you claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You argue that the requestor made the present request for information on behalf of an inmate. You state the suspect at issue in the submitted information is an inmate confined in a correctional facility, and you argue that the requestor made the present request as an agent of this incarcerated individual. The requestor, in this instance, appears to be a relative of the inmate. However, the fact that the requestor may be the inmate's relative does not in itself establish that he submitted the request as an agent of the inmate. As you have not provided any additional information establishing that the requestor is in fact acting as an agent of an inmate, we cannot conclude that section 552.028 is applicable in this instance. Accordingly, we will address your arguments against disclosure under the Act.

Section 552.108 of the Government Code provides in pertinent 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) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(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.

Id. §§ 552.108(a)(4), (b)(3). 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.* §§ 552.108, .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 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 is for the district attorney's entire prosecution file for the cause number specified in the request. You assert that release of the submitted 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 determine section 552.108(a)(4) is generally applicable to the submitted information.

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 Publ'g 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 submitted information under section 552.108(a)(4) of the Government Code.¹ You contend the basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* Generally, information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when the requestor knows the identity of the alleged victim. *See* ORD 393. Although you

¹As our ruling is dispositive, we do not address your remaining arguments against disclosure.

seek to withhold the basic information in its entirety, you have not demonstrated, nor does the information reflect, that the requestor knows the identity of the alleged sexual assault victim.

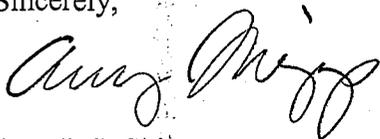
As previously noted, information that identifies a sexual assault victim must be withheld to protect the victim's privacy. *See* ORD 393. In this instance, the complainant is the victim of an alleged sexual assault; therefore, the district attorney must withhold the complainant's identifying information from the basic information under section 552.101 in conjunction with common-law privacy. However, we find none of the remaining basic information is intimate or embarrassing and of no legitimate concern. Therefore, none of the remaining information may be withheld on this basis.

In summary, except for basic information, the district attorney may withhold the submitted information under section 552.108(a)(4) of the Government Code. In releasing basic information, the district attorney must withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/vb

Ref: ID# 404317

Enc. Submitted documents

c: Requestor
(w/o enclosures)