



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2011

Ms. Jennifer Rutherford McClure
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2011-04899

Dear Ms. McClure:

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# 414125.

The Denton County District Attorney (the "district attorney") received a request for all signed, videotaped, or electronically recorded statements and confessions of a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor only seeks the statements and confessions of a named individual. Accordingly, the remaining information is not responsive to the present request, we do not address your arguments for this information, and it need not be released.

You seek to withhold the responsive information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. These sections provide in relevant parts as follows:

- (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.

Gov't Code § 552.108(a)(4), (b)(3). 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 "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." *Id.* at 380 (quoting *Nat'l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). Accordingly, the court concluded in such an instance, the district attorney's entire litigation file is privileged attorney work product.

You contend the request for information essentially encompasses the entire prosecution file for the case at issue and argue release of the file would reveal the mental impressions or legal reasoning of prosecutors. However, as noted above, the requestor only seeks the statements and confessions of a named individual. Therefore, the present request is not for the entire litigation file and *Curry* is inapplicable. Additionally, we find a prosecutor did not prepare the responsive information, and you have failed to demonstrate such information reveals the mental impressions or legal theories of a prosecutor. Therefore, the district attorney may not withhold the information at issue under subsections 552.108(a)(4) and (b)(3) of the Government Code.

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 laws that make criminal history record

information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find no portion of the responsive information contains CHRI that is confidential under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. Accordingly, no portion of the responsive information may be withheld on that basis.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency. *Id.* § 552.130(a)(1). The district attorney must withhold the Texas driver’s license number we have marked in the responsive information under section 552.130 of the Government Code.¹

Section 552.147 of the Government Code states that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Upon review, we find the remaining responsive information does not contain a social security number. Accordingly, no portion of the information at issue may be withheld under section 552.147 of the Government Code.

In summary, the district attorney must withhold the Texas driver’s license number we have marked under section 552.130 of the Government Code. The remaining responsive information must be released.²

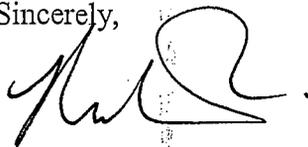
¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov’t Code § 552.023. Thus, if the district attorney receives another request for this information from a different requestor, then the district attorney should again seek a decision from this office.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 414125

Enc. . Submitted documents

cc: Requestor
(w/o enclosures)