ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2011

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

OR2011-08354

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# 420394.

The Dallas County District Attorney's Office (the "district attorney") received a request for information relating to a specified investigation. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.1325, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made by the district attorney. Section 552.111 of the Government Code, which you claim, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). As such, section 552.111 is not other law that makes

information expressly confidential for purposes of section 552.022(a)(1). Therefore, the district attorney may not withhold any of the submitted information under section 552.111 of the Government Code. We note you also claim the attorney work product privilege under Texas Rule of Civil Procedure 192.5. Although the Texas Rules of Civil Procedure have been held to be "other law" within the meaning of section 552.022, *see In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001), they are applicable only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted information pertains to a criminal investigation, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure is not applicable in this instance. Therefore, the district attorney may not withhold any of the submitted information under Texas Rule of Civil Procedure 192.5. We will consider the district attorney's claims under sections 552.101, 552.108, 552.130, 552.1325, and 552.137 of the Government Code.

We next note section 552.022 of the Government Code also provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). The court document submitted as Exhibit J is subject to section 552.022(a)(17). Section 552.108 also is a discretionary exception that may be waived. *See* Open Records Decision No. 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for purposes of section 552.022(a)(17). Therefore, Exhibit J may not be withheld under section 552.108. Sections 552.101 and 552.130 of the Government Code, which you also claim for Exhibit J, are confidentiality provisions for purposes of section 552.022(a)(17). However, none of the information in Exhibit J falls within the scope of either of those exceptions. Therefore, the district attorney must release the court document in Exhibit J pursuant to section 552.022(a)(17).

Next, we address your claim under section 552.108 of the Government Code for the rest of the submitted information. This exception 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.

(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) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). 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. You contend the instant request for information "necessarily constitutes a request for the [d]istrict a[]ttorney's entire litigation file[.]" Based on your representations and our review, we conclude section 552.108(a)(4) and (b)(3) are generally applicable in this instance.

We note 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 offense and arrest 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* 531 S.W.2d at 186-188; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney may withhold the rest of the submitted information under section 552.108(a)(4) and (b)(3) of the Government Code and the decision in *Curry*.

We note basic information includes an identification and description of the complainant. We understand you to claim the common-law informer's privilege under section 552.101 of the Government Code for the complainant's identity. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Texas courts have long recognized the common-law informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See* Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. We conclude the district attorney may withhold the complainant's name, which we have marked in Exhibit G, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the district attorney (1) must release Exhibit J pursuant to section 552.022(a)(17) of the Government Code; (2) may withhold the rest of the submitted information under section 552.108(a)(4) and (b)(3) of the Government Code and the decision in *Curry*, except for the basic offense and arrest information that must be released under section 552.108(c); and (3) in releasing basic information, may withhold the complainant's name in Exhibit G under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.[1] As we are able to make these determinations, we need not address your other arguments against disclosure.

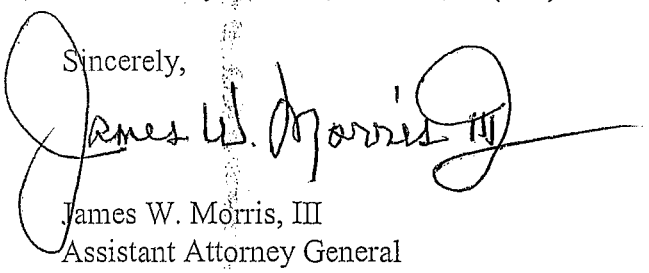
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

[1]We note basic information includes an arrested person's 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.

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 420394

Enc: Submitted documents

c: Requestor
(w/o enclosures)