



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2011

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

OR2011-08838

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# 421149.

The Harris County District Attorney's Office (the "district attorney") received a request for all information relating to the trial of a named individual that was prosecuted by the district attorney. You state you have provided the requestor with some of the requested information. You contend some of the submitted information is not subject to the Act. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.1325 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you contend the information in Appendix B-4 is a grand jury subpoena and therefore not subject to the Act. 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 Decision Nos. 513 (1988), 411 (1984), 398 (1983); *but see* ORD 513 at 4 (defining limits of judiciary exclusion). You state the grand jury subpoena in Appendix B-4 is held by the district attorney on behalf of the grand jury. Accordingly, this information consists of records of the

judiciary not subject to disclosure under the Act and the district attorney need not release this information.¹

We note the information in Appendix B-9 contains the requestor's client's fingerprint. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides in part that "[i]n this chapter . . . '[b]iometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprint information. Accordingly, the district attorney must release the fingerprint we have marked to this requestor under section 560.002 of the Government Code.

Section 552.108 of the Government Code 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). 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), held that "the decision as to what to

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the information in Appendix B-4.

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 related to the district attorney's prosecution of a specified case. You assert the instant request is for the district attorney's entire prosecution file for the case at issue. You argue this information "reflect[s] the mental impressions of the attorney representing the State and her staff and the legal reasoning of the district attorney to proceed with criminal charges." Based on your representations and our review, we conclude section 552.108(a)(4) of the Government Code is applicable to the remaining information that is subject to the Act.

We note, however, 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 basic "front-page" information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. 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 considered to be basic information). Thus, with the exception of basic information, the district attorney may withhold the information subject to the Act under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.²

In summary, the district attorney need not release the grand jury subpoena the district attorney is keeping as an agent of the grand jury in Appendix B-4. With the exception of the requestor's client's fingerprint we have marked and basic information, the district attorney may withhold the information that is subject to the Act under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*. The district attorney must release the remaining information that is subject to the Act.³

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

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

³Because this requestor has a special right of access to his client's information being released, in the event the district attorney receives another request for this information from someone without such a right of access, the district attorney must ask this office for a ruling.

(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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 421149

Enc. Submitted documents

c: Requestor
(w/o enclosures)