



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 18, 2011

Ms. J. Macklin Milligan  
Assistant District Attorney  
Harris County  
1201 Franklin, Suite 600  
Houston, Texas 77002

OR2011-10180

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# 424064.

The Harris County District Attorney's Office (the "district attorney") received a request for the case file pertaining to Houston Police Department incident report number 196338905E involving Dee Foundries. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor asserts the district attorney did not comply with the requirements of the Act in requesting this decision. The requestor states he first requested the information at issue on April 12, 2011, "via phone call to [the district attorney]." Section 552.301 states in relevant part:

- (a) A governmental body that receives a *written request* for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a

previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

...

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's *written request*:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

*See id.* § 552.301(a), (b), (d) (emphasis added). The duty to request a decision from this office as to whether information may properly be withheld under the Act does not arise until the governmental body receives a written request for the information. *See id.* Consequently, the verbal request the district attorney received by telephone on April 12, 2011, did not trigger the requirements of section 552.301 of the Government Code. The requestor also asserts that, as of his letter dated May 13, 2001, the district attorney has not sent the requestor a written statement that the district attorney wishes to withhold the requested information and has asked for a decision from the attorney general or a copy of the district attorney's request for a decision, as required by sections 552.301(d)(1) and 552.301(d)(3). The district attorney states, and submits documentation showing, it received the requestor's written request on May 2, 2011. Thus, the district attorney's ten business-day deadline was May 16, 2011. The district attorney requested a ruling from this office on May 10, 2011. Therefore, we consider the district attorney to have timely submitted its request for this decision. Additionally, the district attorney's brief to this office contains a notation the requestor was copied on the brief on that date. Therefore, we conclude the district attorney complied with the requirements of section 552.301 and will address its arguments against disclosure.

Section 552.108 of the Government Code provides in relevant 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.

*Id.* § 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); *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. In this instance, the requestor seeks the district attorney's entire case file for a specified case. Thus, upon review, we conclude section 552.108(a)(4) of the Government Code is applicable.

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*). Therefore, with the exception of basic information, the district attorney may withhold the submitted information under section 552.108(a)(4) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments under section 552.108.

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,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 424064

Enc. Submitted documents

c: Requestor  
(w/o enclosures)