



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2011

Mr. Bradford Clements
Assistant District Attorney
Dallas County District Attorney's Office
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2011-11640

Dear Mr. Clements:

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# 427071.

The Dallas County District Attorney's Office (the "district attorney") received a request for all records involving incident number M-0936214 pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the district attorney does not maintain information pertaining to an individual with names as spelled by the requestor. The Act does not require a governmental body to make available information that did not exist when the request was received nor does it require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Because you have provided documents for our review, we assume the district attorney has made a good-faith effort to do so.

Next, we note the submitted information includes court-filed documents that are subject to section 552.022 of the Government Code. Section 552.022(a) 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 district attorney seeks to withhold the court-filed documents under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas, 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and section 552.108 are not other laws that make information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court-filed documents may not be withheld under section 552.103 or section 552.108. As the district attorney claims no other exception to the disclosure of the marked court-filed documents, they must be released.

Next, we note the remaining information includes a CR-3 report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). However, section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.¹ In this instance, the requestor has provided the district attorney with two of the three specified pieces of information pursuant to section 550.065(c)(4). Although you seek to withhold this information under sections 552.103, 552.108, and 552.130 of the Government Code, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Accordingly, the submitted CR-3 report, which we have marked, must be released in its entirety pursuant to section 550.065(c)(4) of the Transportation 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:

...

¹*See* Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

(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.

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.* §§ 552.108, .301(e)(1)(A); *see also 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 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 "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 state the instant request for information encompasses the district attorney's entire prosecution file. Thus, you argue release of the remaining submitted information would reveal the mental impressions or legal reasoning of prosecutors. Based on your representations and our review of the remaining information, we agree section 552.108(a)(4) is applicable to the remaining information.

We note, 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*. *See* 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 also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information includes, among other items, an identification and description of the complainant, but does not include the identities of victims or witnesses or motor vehicle information subject to section 552.130 of the Government Code. *See* ORD 127. Thus, with the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.²

We understand you to argue portions of the basic information are subject to 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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. 540 S.W.2d at 685. To

²As our ruling is dispositive, we need not address the remaining arguments against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type 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.* at 683. Upon review, we find you have not demonstrated how any portion of the basic information is highly intimate and embarrassing and not of legitimate public concern. Accordingly, the district attorney may not withhold any of the basic information under section 552.101 in conjunction with common-law privacy.

In summary, the district attorney must release the submitted court-filed documents, which we have marked, pursuant to section 552.022(a)(17) of the Government Code. The district attorney must also release the submitted CR-3 report, which we have marked, pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of basic information, which must be released, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 427071

Enc. Submitted documents

c: Requestor
(w/o enclosures)