



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2011

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2011-15068

Dear Ms. Fourt:

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# 433284.

The Tarrant County District Attorney's Office (the "district attorney") received two requests from the same requestor to inspect the district attorney's prosecution files related to each information previously released to the requestor. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of 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 although you make arguments for the pending criminal cases, you have not submitted any information pertaining to the pending criminal cases for our review. Further, although you state the district attorney submitted a representative sample of the requested information, the submitted representative sample consists exclusively of records relating to closed criminal cases. Thus, we find the submitted information is not representative of the

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<sup>1</sup>Although you raise section 552.137 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn this exception. *See* Gov't Code § 552.301(b), (e), .302.

responsive information relating to pending criminal prosecution files. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of the Government Code, information at issue is presumed to be public). Accordingly, because you have not submitted any pending criminal cases for our review, we assume you have released this information. *See id.* §§ 552.301(a), .302. If the district attorney has not released this information, it must do so at this time.

Next, we must address the requestor's assertion the district attorney failed to comply with section 552.301 of the Government Code by failing to release all the responsive documents in response to his previous request, dated May 6, 2011, for any record required to be kept by the district attorney pursuant to any applicable statute or county commissioners' decrees pertaining to any criminal trespass violation in the City of Euless, prosecutable in a Tarrant County Criminal Court. *See id.* § 552.301. Further, the requestor states his present requests are not new requests, but follow up requests. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The district attorney explains, and provides documentation showing, it responded to the requestor's May 6, 2011 request for information by releasing the information the district attorney deemed to be responsive to the requestor.<sup>2</sup> We note a governmental body must make a good-faith effort to relate a request to information held by the governmental body. *See Open Records Decision No. 561 at 8 (1990)*. We also note, in comments to this office, the requestor states he sought information from "the in-take department of the ...[district attorney's] [o]ffice[.]" Thus, based on the district attorney's representations and the information provided to this office, we conclude the district attorney made a good faith effort and released all information maintained by the district attorney that was responsive to the May 6, 2011 request. The district attorney explains the requests at issue in this request for a ruling are new requests for information. We find the district attorney complied with section 552.301 of the Government Code with respect to these requests, and we will consider the district attorney's arguments against disclosure of the submitted information.

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<sup>2</sup>The district attorney provides documentation showing it released the complaints for each charge of criminal trespass in the City of Euless.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108.” Gov’t Code § 552.022(a)(1). The submitted information consists of completed investigations made of, for, or by the district attorney. Pursuant to section 552.022(a)(1), these records are expressly public unless they are either excepted under 552.108 of the Government Code or expressly confidential under other law. Sections 552.103 and 552.111 of the Government Code are discretionary exceptions that protect a governmental body’s interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body’s position in litigation and does not itself make information confidential). As such, sections 552.103 and 552.111 do not constitute other laws that make information confidential for the purposes of section 552.022(a)(1). Consequently, the submitted information may not be withheld under section 552.103 or section 552.111. The attorney work product privilege is also found at rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the submitted information relates to criminal cases, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply in this instance. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, and because sections 552.101 and 552.130 are other laws for purposes of section 552.022, we will address the applicability of these exceptions to the submitted information.

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 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, we agree the request is for the district attorney's entire criminal trespass prosecution files. You state the submitted information reflects the prosecutor's thought processes and was created or prepared in anticipation of trial or appeal by the prosecuting attorney, his investigator, or agent. Based on your representations and our review, we agree section 552.108(a)(4) is applicable to the submitted 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). 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 submitted information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.<sup>3</sup>

In summary, with the exception of basic information, the district attorney may withhold the submitted information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.<sup>4</sup>

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

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

<sup>4</sup>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. *See* Gov't Code § 552.147(b).

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 cursive script that reads "Kirsten Brew".

Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 433284

Enc. Submitted documents

c: Requestor  
(w/o enclosures)