



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2011

Ms. Kristin Kidd
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202-2850

OR2011-15765

Dear Ms. Kidd:

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# 434702.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for the district attorney's file number F-2010-2442-C involving the requestor's client.¹ You state the district attorney has provided some of the requested information, including basic information, to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted litigation file information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹You state the district attorney received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Although you also raise section 552.107 of the Government Code as an exception to disclosure of the submitted information, you have not provided any arguments regarding the applicability of this section. We, therefore, do not address section 552.107. *See* Gov't Code §§ 552.301(e)(1)(a), .302.

Initially, we note the submitted information includes the test results of an arrestee's blood alcohol content. Section 724.018 of the Transportation Code provides that on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. Although you seek to withhold this information under section 552.108 of the Government Code, the general exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In this instance, the requestor is the attorney for the person who provided the blood specimen at the request of a peace officer. Therefore, the district attorney must release the blood test results, which we have marked, to this requestor pursuant to section 724.018 of the Transportation Code.

You claim the remaining information is excepted under section 552.108(a)(4) of the Government Code, which provides:

(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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). 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 indicate the submitted information constitutes the district attorney's entire litigation file with respect to the individual and case specified in the request. Based on your representations and our review, we agree, in accordance with the holding in *Curry*, the submitted litigation file documents reflect the mental impressions or legal reasoning of an

attorney representing the state. Therefore, we conclude the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.³

In summary, the district attorney must release the blood test results we have marked to the requestor pursuant to section 724.018 of the Transportation Code. 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 434702

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.