



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2011

Ms. Paula M. Rosales
Assistant District Attorney
Dallas County
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2011-17219

Dear Ms. Rosales:

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# 437045.

The Dallas County District Attorney's Office (the "district attorney") received a request for information related to a specified capital murder case. You indicate the you will withhold social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision from this office under the Act). You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, 552.130, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1) (defining “abuse” for purposes of section 261.201); *see also* Penal Code § 22.04 (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Thus, we find this information, which we have marked, is within the scope of section 261.201(a). You do not indicate the district attorney has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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.

You state the instant request for information encompasses the district attorney's entire prosecution file. You state the remaining requested information "represents the mental impressions, opinions, legal theories, and conclusions of the attorneys representing the [s]tate in this case." Based on your representations and our review, we conclude section 552.108(a)(4) of the Government Code 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). 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). 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 and the court's ruling in *Curry*.²

In summary, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.

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,

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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 "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 437045

Enc. Submitted documents

c: Requestor
(w/o enclosures)