



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2012

Ms. Kristin Kidd
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2012-00066

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# 441023.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for the district attorney's file regarding the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body; except as provided by Section 552.108[.]

¹Although you also raise section 552.111 of the Government Code as an exception to disclosure, you have provided no arguments regarding the applicability of this section. We therefore assume you have withdrawn it. See Gov't Code §§ 552.301(b), (e), .302.

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation. The district attorney may only withhold a completed investigation if it is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Thus, pursuant to section 552.022(a)(1), we will consider your claim under section 552.108 of the Government Code. Further, sections 552.101 and 552.130 of the Government Code make information confidential under the Act. *See* Gov't Code §§ 552.101 (excepts information made confidential by statutory or constitutional law or by judicial decision), .130 (providing for confidentiality of motor vehicle record information). Therefore, we will also consider the applicability of sections 552.101 and 552.130 to the submitted information.

You claim the submitted information is excepted under section 552.108 of the Government Code, which 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); *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 regarding the named individual. You state the submitted information "depict[s] the independent thoughts and judgments made by the Criminal District Attorney" and "reflects the prosecutor's mental impressions." You assert the prosecution file is excepted from disclosure under subsection 552.108(a)(4) in accordance with the decision in *Curry*. Based on your representations and our review, we conclude section 552.108(a)(4) is applicable to the submitted information.

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*). Thus, with the exception of the 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*.²

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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 441023

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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