



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2012

Ms. Christina Alvarado
Assistant District Attorney
Dallas County
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2012-07243

Dear Mr. Alvarado:

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# 455176.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for (1) the district attorney's office's file on a named individual; and (2) "any tape recordings made of any telephone calls" made by the named individual and a list of all visitors the named individual had while in custody at the Dallas County Jail. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is made confidential under the Act or other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the information at issue consists of a completed investigation that is subject to section 552.022(a)(1). Although you raise section 552.111 of the Government Code, this section is discretionary in nature and thus may be waived. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 does not make information confidential under the Act. Therefore, the district attorney's office may not withhold the submitted information under section 552.111. The Texas Supreme Court has held "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply to only "actions of a civil nature." *See* Tex. R. Civ. P. 2. Thus, because the submitted information pertains to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply and this information may not be withheld on that basis. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider your argument under that exception.

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 "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 (internal quotations omitted).

The present request seeks the district attorney's office's file regarding the prosecution of a specified case. You assert the instant request is for the district attorney's office's entire prosecution file for the specified case, which includes the related jail calls and the named individual's inmate visitor list. You argue "release of this information would reveal the mental impressions and legal reasoning of the prosecutors in the district attorney's office." Based on your representations and our review, we conclude section 552.108(a)(4) of the Government Code is applicable to the submitted information.

As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108©. Section 552.108(c) refers to basic “front-page” information held to be public in *Houston Chronicle Publishing Co. 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, which you state will be released, the district attorney’s office 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/bhf

Ref: ID# 455176

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Although basic information includes an arrestee’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. Gov’t Code § 552.147(b).