



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Mr. Scott A. Durfee
Assistant General Counsel
Office of the District Attorney
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002

OR2012-07536

Dear Mr. Durfee:

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# 454276.

The Harris County District Attorney's Office (the "district attorney's office") received a request for the district attorney's case file for a specified cause number and all e-mails discussing the case received by four specified employees of the district attorney's office. You state you have released "first page offense report information" to the requestor.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) requires disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under the Act or other law. Gov't Code § 552.022(a)(17). This information is expressly public under section 552.022(a)(17), and the district attorney's office must release it unless it is

¹We assume the front page information you have released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

confidential under the Act. You raise sections 552.108 and 552.111 of the Government Code for this information. However, these are discretionary exceptions to disclosure that protect the governmental body's interests and do not make information confidential under the Act. *See id.* § 552.007; Open Record Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the marked court-filed documents may not be withheld under sections 552.108 and 552.111. However, we note the court-filed documents contain information subject to section 552.130 of the Government Code, which makes information confidential under the Act.² Therefore, we will consider the applicability of section 552.130 to the information subject to section 552.022(a)(17).

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Therefore, the district attorney's office must withhold the vehicle identification number we have marked under section 552.130 of the Government Code.

Next, we address your argument under section 552.108 of the Government Code for the remaining information, which is not subject to section 552.022. Section 552.108 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.

Id. § 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. You assert the information at issue was prepared in anticipation of criminal litigation and contains the "mental impressions and legal reasoning of attorneys representing the State of Texas." Based on your representations and our review, we conclude section 552.108(a)(4) of the Government Code is applicable to the remaining 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, which you state you have released, the district attorney's office may withhold the remaining submitted information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.³

In summary, the district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and release the remaining information in the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the district attorney's office may withhold the remainder of the submitted 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

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

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 "Kathryn R. Mattingly". The signature is written in black ink and is positioned to the right of the typed name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 454276

Enc. Submitted documents

c: Requestor
(w/o enclosures)