



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2012

Ms. Jordan Hale  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2012-10681

Dear Ms. Hale:

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# 458426 (PIR No. 12-33331).

The Office of the Attorney General (the "OAG") received a request for records relating to the prosecution of Richard M. Anderson, a former Harrison County Judge. The OAG asserts the information is excepted from disclosure pursuant to sections 552.101, 552.107, and 552.108 of the Government Code. We have considered and reviewed the submitted arguments and representative sample of documents.<sup>1</sup>

Section 552.108 of the Government Code provides in relevant part as follows:

- (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:

---

<sup>1</sup>We assume that the representative sample of records 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 that those records contain substantially different types of information than that submitted to this office.

...

(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) reflects 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 that the governmental body seeks to withhold. *See* Gov't Code § 552.301(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 that a request for a district attorney's "entire litigation file" was "too broad" and 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." *Id.* at 380 (quoting *Nat'l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). Accordingly, the court concluded that in such an instance, the district attorney's entire litigation file is privileged attorney work product. The OAG argues the request seeks the prosecutor's entire criminal litigation file and states the file reflects the prosecutor's mental impressions, opinions, legal theories, and conclusions. Based on these representations and our review of the information, we agree Exhibit B is excepted under section 552.108(a)(4) in conjunction with *Curry*.

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 Publ'g 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 OAG may withhold Exhibit B from disclosure based on section 552.108(a)(4).<sup>2</sup>

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.

---

<sup>2</sup>Because section 552.108(a)(4) is dispositive, we do not address the OAG's other arguments.

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](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,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', written in a cursive style.

**Yen-Ha Le**  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 458426

Enc. Submitted documents

c: Requestor  
(w/o enclosures)