



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 10, 2012

Ms. Meredith Kennedy  
Assistant District Attorney  
Wichita County District Attorney's Office  
900 Seventh Street  
Wichita Falls, Texas 76301-2482

OR2012-12629

Dear Ms. Kennedy:

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# 461850.

The Wichita County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.130, and 552.147 of the Government Code, and privileged under Texas Rule of Civil Procedure 192.5.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information consists of a completed investigation subject to section 552.022(a)(1) of the Government Code, which provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). Although the district attorney's office seeks to withhold this information under section 552.107 of the Government Code, this section is a discretionary exception to disclosure and does not make

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<sup>1</sup>Although you raise section 552.103 of the Government Code, we understand you to raise Texas Rule of Civil Procedure 192.5 for your claim that the information at issue is subject to the attorney work-product privilege, which is the proper exception to raise when asserting attorney-work product for information subject to section 552.022 of the Government Code. See Open Records Decision Nos. 676 at 1-2 (2002).

information confidential under the Act. See Open Records Decision Nos. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney's office may not withhold the submitted information under section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider the district attorney's office's assertion of the attorney-client privilege under Texas Rule of Evidence 503, as well as your arguments under Texas Rule of Civil Procedure 192.5. Because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will also consider your claims under section 552.108. Further, as sections 552.101 and 552.130 of the Government Code make information confidential under the Act or other law, we will also consider the applicability of those sections to the submitted information.

Next, we note the submitted information contains a CR-3 accident report form subject to section 552.101 of the Government Code. Section 552.101 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 made confidential by other statutes, such as section 550.065 of the Transportation Code. This section provides that, except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the district attorney's office with two of the three requisite pieces of information specified by the statute. Accordingly, the district attorney's office must withhold the submitted CR-3 accident report form, which we have marked, under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.<sup>2</sup>

Section 552.108 of the Government Code provides in relevant 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:

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<sup>2</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

(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 that 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 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 request for information encompasses the district attorney's office's entire prosecution file for the specified case. You further state the remaining information reflects the mental impressions or legal reasoning of the attorneys prosecuting the case. Thus, upon review, we conclude section 552.108(a)(4) of the Government Code is applicable to the remaining 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*). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. Therefore, with the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.

In summary, the district attorney's office must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.<sup>3</sup>

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<sup>3</sup>Although 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). Furthermore, as our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

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](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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 461580

Enc. Submitted documents

c: Requestor  
(w/o enclosures)