



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2012

Mr. Gerard A. Calderon
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205

OR2012-14268

Dear Mr. Calderon:

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# 464334.

The Bexar County District Attorney's Office (the "district attorney's office") received a request for the entire file related to two specified cause numbers. You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code, and privileged under rule 503 of the Texas Rules of Evidence.¹ We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information consists of a completed investigation, which 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 it is excepted from disclosure under section 552.108 of

¹Although you also raise section 552.101 of the Government Code, you provide no arguments to support this claim. See Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested). In addition, this office has concluded section 552.101 does not encompass discovery privileges or other exceptions found in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address your assertion of section 552.101 for the submitted information.

the Government Code or is expressly made confidential under the Act or other law. See Gov't Code § 552.022(a)(1).

Although you raise sections 552.103 and 552.111 of the Government Code, these sections are discretionary in nature and thus may be waived. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver). As such, sections 552.103 and 552.111 do not make information confidential under the Act. Therefore, the district attorney's office may not withhold the submitted information under section 552.103 or section 552.111. Pursuant to section 552.022(a)(1), we will address your arguments under section 552.108 of the Government Code.

Further, the Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022 of the Government Code. See *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider the applicability of the attorney-client privilege under Texas Rule of Evidence 503. However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." See TEX. R. CIV. P. 2. Thus, because the submitted information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply in this instance.

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:

(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. You further state the submitted information was prepared by the district attorney’s office in anticipation of or in the course of preparing for criminal litigation. Thus, upon review, we conclude section 552.108(a)(4) of the Government Code is applicable to the information at issue.

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*). Therefore, with the exception of basic information, which must 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/som

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

Ref: ID# 464334

Enc. Submitted documents

c: Requestor
(w/o enclosures)