



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2013

Mr. William Schultz  
Assistant District Attorney  
Civil Division  
Criminal District Attorney's Office  
Denton County  
P.O. Box 2850  
Denton, Texas 76202

OR2013-13228

Dear Mr. Schultz:

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# 494924.

The Denton County District Attorney's Office (the "district attorney's office") received a request for the employment file of a named individual. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.130, 552.137, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

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<sup>1</sup> Although you also raise section 552.111 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

Gov't Code § 552.022(a)(1). The submitted information consists of a completed administrative investigation. The district attorney's office must release this information under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. Although you raise section 552.103 of the Government Code for this information, section 552.103 is discretionary in nature and does not make information confidential under the Act. *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. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the district attorney's office may not withhold the submitted information on the basis of section 552.103. As information subject to section 552.022(a)(1) may be withheld under section 552.108, and sections 552.101, 552.102, 552.130, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d706(Tex. 1977). As noted above, the submitted information consists of an administrative investigation involving the named individual. We note section 552.108 is generally not applicable to an internal administrative investigation involving a law enforcement officer that did not result in a criminal investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S W.3d 320 (Tex. App.—Austin 2002, no pet.). You do not explain how this administrative information relates to a pending criminal investigation and prosecution nor do you explain how release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find you have failed to establish the applicability of subsection 552.108(a)(1) to the information at issue. Accordingly, we find the submitted information is not subject to subsection 552.108(a)(1), and the district attorney's office may not withhold it on that basis.

You also seek to withhold the submitted information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. These subsections provide in relevant parts 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:

...

(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.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(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), (b)(3). 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 "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 in such an instance, the district attorney's entire litigation file is privileged attorney work product.

You contend the request for information essentially encompasses the entire prosecution file for a civil case and argue release of the information would reveal the mental impressions or legal reasoning of prosecutors. However, as noted above, the requestor is seeking employment records of the named individual. Therefore, the present request is not for the entire litigation file and *Curry* is inapplicable. Additionally, we find you have failed to demonstrate how the information at issue was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, the district attorney's office may not withhold the information at issue under subsections 552.108(a)(4) and (b)(3) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public.

*Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). This office has also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect. See Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Further, this office has determined common-law privacy generally protects the identities of juvenile offenders. See ORD 394; *cf.* Fam. Code § 58.007(c). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We understand you to claim section 552.102(a) of the Government Code which excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find no portion of the information at issue is subject to section 552.102(a) of the Government Code, and none of the remaining information may be withheld on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Upon review, we find none of the remaining information is subject to section 552.130 and none of it may be withheld on that basis.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See *id.* § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us a member of the public has affirmatively consented to the release of any e-mail addresses contained in the submitted information. Therefore, the district attorney's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. We note,

however, that none of the information at issue contains social security numbers. Accordingly, none of the remaining information may be withheld under section 552.147 of the Government Code.

Lastly, we note some of the remaining information is subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. *Id.* § 552.117(a)(2). Accordingly, the district attorney's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and under sections 552.117 and 552.137 of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>The 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).

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Enc. Submitted documents

cc: Requestor  
(w/o enclosures)