



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2014

Mr. Andrew Warthen
Assistant Criminal District Attorney
Civil Section
Bexar County Criminal District Attorney's Office
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2014-03486

Dear Mr. Warthen:

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# 514828.

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to specified charges against a named individual, including the district attorney's office's file. You state you have released some of the requested information to the requestor with a social security number redacted pursuant to section 552.147(b) of the Government Code.¹ You claim that some of the requested information is not subject to the Act. You also claim that some of the submitted information is exempted from disclosure under sections 552.108 and 552.130 of the Government Code.²

¹Section 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

²Although you raise section 552.101 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 Therefore, we assume you have withdrawn your claim this section applies to the submitted information.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.

We have considered your arguments and reviewed the submitted representative sample of information.³

Initially, we understand you to assert some of the requested information is not subject to the Act because it consists of records of the judiciary. The Act is applicable, in part, to information “written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body.” Gov’t Code § 552.002(a)(1). Section 552.003(b) of the Government Code excludes the judiciary from the Act. *Id.* § 552.003(1)(B). Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires that it be disclosed. *See* Open Records Decision No. 25 (1974). In this case, we note the request for information was sent to the district attorney’s office, not the district court. Thus, the requestor seeks information held by the district attorney’s office, not by the court. Accordingly, we find the information at issue is subject to the Act, and we will address the exceptions you raise against its disclosure.

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

³We 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.

(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 is for the district attorney’s office’s entire prosecution file. You further state the information in Exhibit B was prepared by the district attorney’s office in anticipation of or in the course of preparing for criminal litigation. Therefore, the district attorney’s office may withhold the information in Exhibit B under section 552.108(a)(4) of the Government Code and the court’s ruling in *Curry*.⁴

You state the district attorney’s office has redacted the motor vehicle record information in Exhibit C pursuant to section 552.130 of the Government Code.⁵ We note the remaining information in Exhibit C contains additional motor vehicle record information. Section 552.130 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. Accordingly, the district attorney’s office must withhold the additional motor vehicle record information we have marked in Exhibit C under section 552.130 of the Government Code.

In summary, the district attorney’s office may withhold the information in Exhibit B under section 552.108(a)(4) of the Government Code and the court’s ruling in *Curry*. The district attorney’s office must withhold the additional motor vehicle record information we have marked in Exhibit C under section 552.130 of the Government Code. The remaining information in Exhibit C 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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

⁴As our ruling is dispositive, we need not address your argument under section 552.108(b)(3) of the Government Code.

⁵Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 514828

Enc. Submitted documents

c: Requestor
(w/o enclosures)