



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2014

Mr. G. Brian Garrison
Assistant District Attorney
Dallas County District Attorney's Office
Frank Crowley Courts Building
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2014-11888

Dear Mr. Garrison:

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# 528567.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for (1) police reports and witness statements, including statements made by a named individual, related to a specified case, (2) letters and notes exchanged between three named individuals involved in the case, and (3) investigative notes made by a named former employee of the district attorney's office related to the case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.132, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which constitutes a representative sample.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, we understand the requestor to assert she has a right of access to the requested information under the Michael Morton Act, which amends article 39.14 of the Texas Code of Criminal Procedure. However, we note this amendment only applies to the prosecution of an offense committed on or after January 1, 2014. *See* Act of May 16, 2013, 83rd Leg., R.S., S.B. 1611, §§ 3-4. We note the requested information pertains to an offense that was committed prior to January 1, 2014. Thus, we find this section inapplicable. We further note the Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Gov't Code §§ 552.005 (the Act does not affect scope of civil discovery), .0055 (subpoena duces tecum or request for discovery issued in compliance with statute or rule of civil or criminal procedure is not considered to be request for information under the Act). The discovery process is a process through which parties to litigation can obtain information pertaining to the litigation. A public information request under the Act is a process in which any individual may request information from a governmental body. Thus, the discovery process has no bearing on the availability of information requested under Act.

Next, we note you have not submitted information responsive to the portions of the request seeking witness statements given by a named individual or correspondence between that same named individual and another individual. To the extent any information responsive to these portions of the request existed on the date the district attorney's office received the request, we assume the district attorney's office has released it. If the district attorney's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note you have submitted information that falls outside the scope of the categories of information requested. Therefore, this information, which you have marked Exhibit C, is not responsive to the present request. The district attorney's office need not release non-responsive information in response to the request, and this ruling will not address that information.²

Next, we will address your argument under section 552.108 of the Government Code for the information at issue, as it is potentially the most encompassing exception you claim. Section 552.108 states, in pertinent part, the following:

(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:

²As our ruling is dispositive for this information, we need not address your arguments against its disclosure.

...

(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 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) held, "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 (internal quotations omitted). You state the instant request for information is a request for the district attorney's entire prosecution file for the specified case. We disagree the requestor has sought the entire prosecution file. Rather, the requestor has specifically itemized the information held by the district attorney's office that she seeks. Such a request does not constitute a request for the "entire" file. Thus, we conclude the present request is not a request for the district attorney's office's entire prosecution file. As a result, the district attorney's office may not withhold the information at issue under *Curry*, and you must demonstrate how the information is excepted under section 552.108(a)(4) of the Government Code.

You state the submitted responsive information was prepared by an assistant district attorney representing the State of Texas (the "state") in order to prepare for criminal litigation, and release of this information would reveal the mental impressions and legal reasoning of the prosecutor. Upon review, we agree that portions of the information at issue consist of information prepared by an attorney representing the state and reflect the mental impressions or legal reasoning of the prosecuting attorney. Thus, you may withhold the information we have marked under section 552.108(a)(4) of the Government Code.³ However, you have failed to demonstrate how any of the remaining responsive information is protected by section 552.108(a)(4), and the district attorney's office may not withhold it on that basis.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

³As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Code § 552.101. This section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the information we have marked constitutes CHRI, which the district attorney’s office must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.⁴ However, we find you have failed to demonstrate how any portion of the remaining information constitutes CHRI for purposes of chapter 411. Accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find you have not demonstrated how any portion of the remaining responsive information consists of medical records for purposes of the MPA, and the district attorney's office may not withhold any of the remaining responsive information under section 552.101 of the Government Code on that basis.

We understand you to claim portions of the remaining responsive information are subject to the doctrine of common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note because the common-law right to privacy is a personal right that lapses at death, common-law privacy does not protect information that relates only to a deceased individual. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). Upon review, we find no portion of the remaining responsive information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the district attorney's office may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

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. The purpose of section 552.130 is to protect the privacy interests of individuals. As noted above, because the right of privacy lapses at death, information that

pertains solely to deceased individuals may not be withheld under section 552.130 of the Government Code. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272 at 1. Upon review, we find the district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁵ However, we find none of the remaining information consists of motor vehicle record information subject to section 552.130. Accordingly, none of the remaining information may be withheld under section 552.130 of the Government Code.

You claim portions of the remaining responsive information are protected from public disclosure under section 552.132 of the Government Code, which provides, in relevant part, the following:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

Gov't Code § 552.132(b), (d). The remaining responsive information is held by the district attorney's office, not the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation that any of the remaining information pertains to a victim who is an employee of the district attorney's office who made an election in accordance with section 552.132(d). Accordingly, the district attorney's office may not withhold any of the remaining information under section 552.132 of the Government Code.

⁵As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

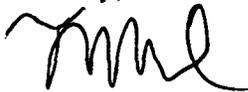
Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the district attorney’s office may withhold the social security number we have marked under section 552.147(a) of the Government Code.

In summary, the district attorney’s office may withhold the information we have marked under section 552.108(a)(4) of the Government Code. The district attorney’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The district attorney’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The district attorney’s office may withhold the social security number we have marked under section 552.147(a) of the Government Code. The district attorney’s office must release the remaining responsive information.

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

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 528567

Enc. Submitted documents

c: Requestor
(w/o enclosures)