



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2014

Mr. Bill Delmore
Assistant District Attorney
9th Judicial District
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2014-19765

Dear Mr. Delmore:

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# 541956.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for all documents in the files of the district attorney's office for two specified case numbers. You state the district attorney's office is providing the requestor with some of the requested information. You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). The court-filed documents we have marked are subject to section 552.022(a)(17) and must be released unless they are confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary

exceptions generally). Therefore, the district attorney's office may not withhold the information that is subject to section 552.022(a)(17) under section 552.108. We note these documents contain information that is subject to section 552.130 of the Government Code, which makes information confidential under the Act.¹ Thus, we will address the applicability of this exception to the information that is subject to section 552.022(a)(17). Additionally, we will address your argument under section 552.108 for the information that is not subject to section 552.022(a)(17).

Section 552.108 of the Government Code provides, in 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). 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 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 (internal quotations omitted) (quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993)).

The present request seeks the district attorney's office's file for two specified case numbers. You assert the instant request is for the district attorney's office's entire prosecution file for the cases at issue. You argue the release of the information at issue would reveal the prosecutor's legal reasoning and thought processes. Based on your representations and our

¹The 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).

review, we conclude section 552.108(a)(4) is applicable to the information that is not subject to section 552.022(a)(17) of the Government Code.

As you acknowledge, 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). Section 552.108(c) refers to basic “front-page” information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. 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 considered to be basic information). Thus, with the exception of basic information, which you state the district attorney’s office has released, the district attorney’s office may withhold the information that is not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(4) of the Government Code and the court’s ruling in *Curry*.²

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). We conclude the district attorney’s office must withhold the information we have marked under section 552.130.

In summary, with the exception of the information that is subject to section 552.022(a)(17) of the Government Code and the basic information, 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*. The district attorney’s office must withhold the information we have marked under section 552.130 of the Government Code. The district attorney’s office must release the remaining information.³

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.

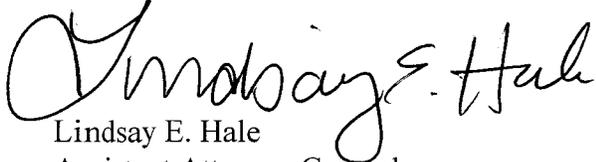
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

²As our ruling is dispositive, we need not address your remaining arguments under section 552.108(a)(1), section 552.108(b)(1), or section 552.108(b)(3) of the Government Code.

³We note the remaining information contains a 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).

[url_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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 541956

Enc. Submitted documents

c: Requestor
(w/o enclosures)