



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2014-22318

Dear Ms. Winn:

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# 546679.

The Travis County Attorney's Office (the "county attorney's office") received two requests from the same requestor for all information pertaining to two specified cases. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

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.

public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (a)(17). The submitted information includes receipts of fee payments to the county attorney's office, as well as a court-filed document. These documents are subject to sections 552.022(a)(3) and 552.022(a)(17), respectively. Therefore, the county attorney's office may only withhold this information if it is confidential under "other law." Although you raise section 552.108 of the Government Code, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the county attorney's office may not withhold the information subject to section 552.022, which we have marked, under section 552.108. As you raise no further exceptions to disclosure of the information subject to section 552.022, it must be released. However, we will consider your argument under section 552.108 of the Government Code for the information not subject to section 552.022.

Next, we note the submitted information contains two CR-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and for the confidential use of certain specified entities. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.*

Although you state the requestor, in this instance, has not satisfied the requirements of section 550.065(c)(4), we find the requestor has provided the county attorney's office with the requisite information for the CR-3 accident reports. Further, although you seek to withhold this information under section 552.108 of the Government Code, we note

information specifically made public by statute may not be withheld from the public under the general exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the county attorney's office may not withhold the CR-3 accident reports under section 552.108, and must release them to this requestor.

Section 552.108 of the Government Code provides, in 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:

...

(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). 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); *see also 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 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 “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).

The present requests encompass the county attorney’s office’s entire prosecution files for the cases at issue. In addition, you assert release of the remaining information would reveal the mental impressions and legal reasoning of prosecutors in the county attorney’s office. Upon review, we find the information at issue was either 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 generally withhold the information at issue under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

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 also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the county attorney’s office may withhold the remaining information pursuant to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.²

In summary, the county attorney’s office must release the information we have marked under sections 552.022(a)(3) and 552.022(a)(17) of the Government Code. The county attorney’s office must release the submitted CR-3 accident reports under section 550.065(c)(4) of the Transportation Code. With the exception of basic information, which must be released, the county attorney’s office may withhold the remaining information pursuant to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

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

²We note basic information includes the arrestee’s 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 requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 546679

Enc. Submitted documents

c: Requestor
(w/o enclosures)