



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2014

Ms. Meagan T. Scott
Assistant District Attorney
Harris County District Attorney
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2014-23204

Dear Ms. Scott:

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# 548382 (#7012292000002805).

The Harris County District Attorney's Office (the "district attorney's office") received a request for all information pertaining to a specified matter. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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:

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.

(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.* §§ 552.108, .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. You contend the request encompasses the district attorney's office's entire prosecution file for the case at issue. In addition, you assert release of the information at issue would reveal the mental impressions or legal reasoning of prosecutors in the district attorney's office. Based on your representations and our review, we agree section 552.108(a)(4) is applicable to the submitted information.

Section 552.108, however, 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*. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 at 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity of the complainant. *See* ORD 127 at 3-4. Thus, with the exception of basic information the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code.²

We note portions of the basic information are protected by common-law privacy. Section 552.101 encompasses the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 met. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

The information at issue relates to alleged attempted sexual assault. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). In this instance, the complainant is also the alleged attempted sexual assault victim. Therefore, in releasing basic information, the district attorney's office must withhold the victim's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code. In releasing basic information, the district attorney's office must withhold the sexual assault victim's identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 548382

Enc. Submitted documents

c: Requestor
(w/o enclosures)