



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 5, 2016

Ms. Larissa T. Roeder  
Assistant District Attorney  
Dallas County  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2016-00252

Dear Ms. Roeder:

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# 594132.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for all records pertaining to two specified cases involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a grand jury indictment, which is a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold this information, which we have marked, under section 552.108 of the Government Code, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally); 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As a result, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the district attorney's office may not withhold the information subject to section 552.022(a)(17) under section 552.108. Further, although you raise section 552.101 of the Government Code in conjunction with common-law privacy for this document, we note information that has been filed with a court is not protected by common-law privacy.

*See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Therefore, the district attorney's office may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. However, because sections 552.101 and 552.130 of the Government Code can make information confidential for purposes of section 552.022(a)(17), we will consider your remaining arguments under section 552.101 and your argument under section 552.130 for the information subject to section 552.022(a)(17), as well as for the remaining information. Further, we will consider your arguments against disclosure for the information not subject to section 552.022(a)(17).

Section 552.108 of the Government Code provides, in relevant part, as follows:

(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); *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), 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 state the instant request for information encompasses the entire prosecution files of the district attorney's office for two specified cases against the named individual. Further, you assert the information not subject to section 552.022(a)(17) reflects the mental impressions or legal reasoning of attorneys representing the state. Thus, upon review, we conclude sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to the information at issue. 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 and the court's ruling in *Curry*.

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*). We note basic information includes, among other things, an arrestee's social security number and home address, but does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* at 3-4. Therefore, with the exception of basic information, the district attorney's office may withhold the information not subject to section 552.022(a)(17) pursuant to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.<sup>1</sup>

You raise common-law privacy for the basic information. 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 Code § 552.101. Section 552.101 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. However, upon review, we find none of the basic information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district attorney's office may not withhold any of the basic information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime

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<sup>1</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter E-1 or subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. Upon review, we find you have failed to demonstrate any portion of the remaining information constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the district attorney’s office may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the district attorney’s office is an agency for purposes of chapter 730 that compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to the district attorney’s office. Consequently, the district attorney’s office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code.

Section 552.130 of the Government Code 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(a). The district attorney’s office must withhold the motor vehicle record information we have marked in the court-filed document under section 552.130 of the Government Code. However, the remaining information does not contain motor vehicle record information. Therefore, the district attorney’s office may not withhold any of the remaining information under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the district attorney’s

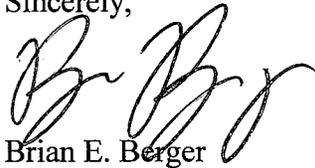
office may withhold the arrestee's social security number within the basic information under section 552.147 of the Government Code.

In summary, with the exception of basic information, the district attorney's office may withhold the information not subject to section 552.022(a)(17) pursuant to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*. The district attorney's office must withhold the motor vehicle record information we have marked in the court-filed document under section 552.130 of the Government Code. The district attorney's office may withhold the arrestee's social security number within the basic information under section 552.147 of the Government Code. The remaining information 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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 594132

Enc. Submitted documents

c: Requestor  
(w/o enclosures)