



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 20, 2006

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76102

OR2006-07859

Dear Ms. Fourt:

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# 254549.

The Tarrant County District Attorney's Office (the "district attorney") received a request for the complete file for case number 0954199. You state that the district attorney has released a portion of the case file, but claim that the remaining portions of the case file are excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted to this office by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address your statement that you have released a portion of the requested information with social security numbers and driver's license numbers redacted. Pursuant to section 552.301 of the Government Code, a governmental body is prohibited from withholding information from a requestor without seeking a ruling from this office unless a statute authorizes such, or the governmental body has received a previous determination for the information at issue. *See Gov't Code § 552.301(a)*; *see also* Open Records Decision No. 673 (2000) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301 of the Government Code). Pursuant to section 552.147(b) of the Government Code, all governmental bodies may redact social

security numbers without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). However, we are not aware of any law that authorizes the district attorney to withhold driver's license numbers without requesting a decision from this office. Further, you do not assert, nor does our review of our records indicate, that the district attorney has been issued a previous determination authorizing it to withhold driver's license numbers without seeking a ruling from this office. Because you did not request a ruling from this office, and the district attorney does not have a previous determination allowing it to withhold driver's license numbers without seeking a ruling from this office, we have no choice but to order the release of the driver's license numbers in the portion of the case file you have released to the requestor.

We note that the information in Exhibit C is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108

Gov't Code § 552.022(a)(1). The information in Exhibit C is a completed investigation made by the district attorney. Therefore, as prescribed by section 552.022, the district attorney must release this information unless it is excepted under section 552.108 or confidential under "other law." You claim that this information is excepted from disclosure under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception to disclosure under the Act and, as such, does not constitute "other law" that makes information confidential. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived); *see also* 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). The Texas Rules of Civil Procedure, however, only apply to "actions of a civil nature." Tex. R. Civ. P. 2. Accordingly, rule 192.5 does not apply to the criminal matter at issue here, and no portion of the submitted information may be withheld on this basis. Because information that is subject to section 552.022(a)(1) may be withheld under section 552.108 and mandatory exceptions, we will consider the district attorney's claims under sections 552.101, 552.108, and 552.115 of the Government Code.

Section 552.108 of the Government Code provides in pertinent 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 that claims an exception to public disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). We note that the requestor seeks access to the district attorney's entire criminal case file in case number 0954199. In *Curry v. Walker*, the Texas Supreme Court held that a district attorney's decision as to what to include in a case file necessarily reveals the attorney's thought processes concerning the prosecution of the case. *See Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). Accordingly, the court found that the district attorney's entire case file was protected by the attorney work product privilege. *Id.* at 380-81. Here, you state and provide documentation showing that you have released some information from the case file to the requestor. Thus, as you do not seek to withhold the entire case file, we find that *Curry* is not applicable in this instance.

You have marked the information in Exhibit C that you seek to withhold under section 552.108(a)(4) of the Government Code. You have excluded from this marked information a death certificate and a report. Therefore, we are only addressing your claimed exception under section 552.108(a)(4) for the information behind the sheet you have marked "DA work product." You state that the information you have marked in Exhibit C includes documents that reflect the prosecutor's thought processes and/ or were created or prepared in anticipation of trial or appeal by the prosecuting attorney, her investigator, or agent in the criminal case. Based on your representations and our review of the information at issue, we determine that section 552.108(a)(4) is applicable to the information you have marked. Accordingly, the district attorney may withhold the information you have marked pursuant to section 552.108(a)(4).¹

¹As our ruling on this information is dispositive, we need not address your remaining arguments against disclosure.

We now turn to the remaining documents in Exhibit C. You assert that the report contains the criminal history of an individual and is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. 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” but does not include “driving record information maintained by [the Department of Public Safety (“DPS”)] under Subchapter C, Chapter 521, Transportation Code.” Gov’t Code § 411.082(2). CHRI obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law.

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. *Id.* §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. *See id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, a compilation of a private citizen’s criminal history is highly embarrassing information that is generally not of legitimate public interest. *Cf. United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). We have marked the criminal history information in the report that must be withheld under section 552.101 of the Government Code.

We note that section 552.130 of the Government Code excepts from public disclosure information relating to a driver’s license or motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130. Thus, the information we have marked must be withheld pursuant to section 552.130.

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. We have marked the social security number of a living person that the district attorney must withhold under section 552.147.

Finally, we turn to the death certificate. Section 552.115 of the Government Code provides that a birth or death record maintained by the vital statistics unit of the Texas Department of State Health Services or a local registration official is excepted from required public disclosure except that "a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the bureau of vital statistics or local registration official." Gov't Code § 552.115. The death certificate at issue here is contained in the district attorney's case file. Since section 552.115 only applies to a death certificate maintained by the vital statistics unit or local registration official, the district attorney may not withhold the death certificate pursuant to that provision. *See* Open Records Decision No. 338 (1982).

In summary, the district attorney may withhold the information it has marked in Exhibit C pursuant to section 552.108(a)(4) of the Government Code. The district attorney must withhold: 1) the criminal history information we have marked pursuant to section 552.101 of the Government Code; 2) the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code; and 3) the social security numbers we have marked pursuant to section 552.147 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 254549

Enc. Submitted documents

c: Ms. Kim Mills-Smith
1525 Lake Forest Lane
McDonough, Georgia 30253
(w/o enclosures)