



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2006

Ms. Christina O'Neil
Assistant District Attorney
County of Dallas
Frank Cowley Courts Building
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2006-13414

Dear Ms. O'Neil:

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# 264514.

The Dallas County District Attorney's Office (the "district attorney") received a request for "a copy of the [d]istrict [a]ttorney's entire file" for a specified criminal case. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. 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) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this case, the requestor has provided two pieces of information specified by the statute. Accordingly, the ST-3 accident reports in the submitted information must be released to the requestor.

We also note that some of the documents at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the portion of the submitted information that constitutes medical records of the requestor's client and that may only be released in accordance with the MPA.

Next, we note that the remaining information is subject to section 552.022(a) of the Government Code. Section 552.022(a) of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). In this instance, the remaining information consists of a completed investigation made of, for, or by the district attorney. Accordingly, the information must be released under section 552.022(a)(1) of the Government Code, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. You claim that these documents are excepted from disclosure under section 552.111 of the Government Code. Section 552.111 of the Government Code is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such section 552.111 of the Government Code is not "other law" that makes information confidential for the purposes of section 552.022 of the Government Code. Therefore, the district attorney may not withhold any of the remaining information under section 552.111 of the Government Code.

The attorney work product privilege is found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has 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 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." TEX. R. CIV. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to any of the information at issue, which relates to a criminal case. Therefore, the district attorney may not withhold any of the information at issue under rule 192.5 of the Texas Rules of Civil Procedure.

However, since section 552.022(a)(1) of the Government Code provides that information made public under that section may be excepted from disclosure under section 552.108 of the Government Code, we will address the district attorney's section 552.108 claim as it pertains to the remaining information. Furthermore, because section 552.101 of the Government Code constitutes "other law" for purposes of section 552.022 of the Government Code, we will also consider this exception.

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.

(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) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body that claims an exception to disclosure under section 552.108 of the Government Code must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *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).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that 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, 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. In this instance, the requestor seeks the district attorney's entire case file. *Curry* thus provides that the release of the remaining information would reveal the district attorney's mental impressions or legal reasoning. Based on your representations and our review of the submitted representative sample of information, we agree that section 552.108(a)(4) of the Government Code is applicable in this instance.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g 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 made public by *Houston Chronicle*). The district attorney must release basic front-page information even if this information does not literally appear on the front page of an offense or arrest report. You may choose to release all or part of the remaining information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Lastly, the remaining information contains the social security number of the arrestee.¹ 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. *Id.* § 552.147. Therefore, the district attorney must withhold the social security number of the arrestee under section 552.147 of the Government Code.²

¹The Office of the Attorney General will raise a mandatory exception like section 552.147 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note that 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.

In summary, the district attorney must release the marked ST-3 accident report forms under section 552.101 of the Government Code in conjunction with chapter 550 of the Transportation Code. The district attorney may release the marked medical records only as provided under the MPA. With the exception of basic information, the district attorney may withhold the remaining information under section 552.108 of the Government Code. In the basic information, however, the district attorney must withhold the arrestee's social security number under section 552.147 of the Government Code.³

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).

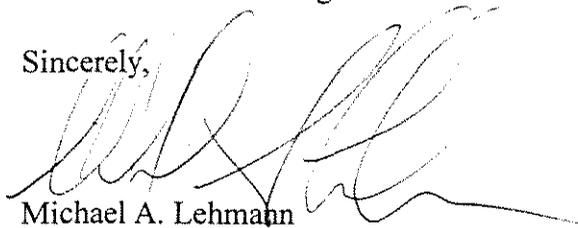
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

³As this ruling is dispositive, we need not address your remaining argument.

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,

A handwritten signature in black ink, appearing to read "Michael A. Lehmann", written over a horizontal line.

Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/dh

Ref: ID# 264514

Enc. Submitted documents

c: Mr. Tim Brandenburg
Law Firm of Roger Walton
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Arlington, Texas 76017
(w/o enclosures)