



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 20, 2006

Ms. Amy Columbus  
Assistant District Attorney  
Dallas County  
133 North Industrial Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2006-14987

Dear Ms. Columbus:

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# 267836.

The Dallas County District Attorney's Office (the "district attorney") received a request for all records pertaining to a theft charge against a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

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:

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

- (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 submitted information constitutes a completed investigation made of, for, or by the district attorney. A completed investigation must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Although the district attorney claims section 552.111 for portions of this information, this section is a discretionary exception to public disclosure that protects the 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), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 may be waived). As such, section 552.111 does not constitute "other law" that makes information confidential. Therefore, the district attorney may not withhold any of the submitted information under section 552.111 of the Government Code.

We note that 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. However, since section 552.022(a)(1) 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 submitted information. Furthermore, because section 552.130 of the Government Code constitutes "other law" for purposes of section 552.022, we will also address this provision for the submitted information.

Section 552.108 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 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 (Tex. 1993, orig. proceeding), 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 all of the district attorney's documents related to a named individual. We agree that this request encompasses the district attorney's entire case file for the referenced individual. You assert that the information and its organization reflects the mental impressions and legal reasoning of the attorneys representing the state. You also contend that the information was gathered by attorneys in preparation for trial, and therefore constitutes attorney work product. Based on your representations and our review of the remaining information, we agree that section 552.108(a)(4) is applicable in this instance.

We note, however, that 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* *Open Records Decision No. 127* (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information, the district attorney may withhold the submitted information from disclosure based on section 552.108(a)(4) and the court's holding in *Curry*.

Finally, we note that the submitted information contains an arrestee's social security number. 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. Therefore, the district attorney must withhold this arrestee's social security number pursuant to section 552.147.

In summary, with the exception of the basic information, which must be released, the district attorney may withhold the submitted information based on section 552.108(a)(4) of the Government Code, and the court's holding in *Curry*. The district attorney must withhold the arrestee's social security number pursuant to section 552.147 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/jww

Ref: ID# 267836

Enc. Submitted documents

c: Mr. Bo Blackburn  
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(w/o enclosures)