



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2009

Mr. Scott A. Durfee
General Counsel
Harris County District Attorney's Office
1201 Franklin Street Suite 600
Houston, Texas 77002-1923

OR2009-01237

Dear Mr. Durfee:

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# 333677.

The Harris County District Attorney's Office (the "district attorney") received a request for information relating to a specified criminal cause number. You claim that the requested 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 information you submitted.

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:

(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 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 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. The instant request is for "any and all records" regarding the specified criminal cause. You therefore contend, and we agree, that this request is for the district attorney's entire litigation file. We therefore conclude that section 552.108(a)(4) and (b)(3) are generally applicable in this instance.

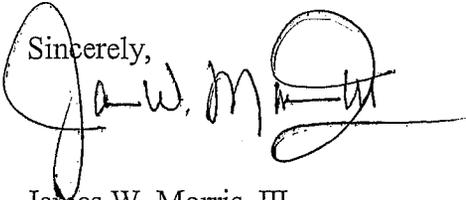
We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The district attorney must release basic front-page information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* 531 S.W.2d at 186-188; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney may withhold the

rest of the submitted information under section 552.108(a)(4) and (b)(3) of the Government Code and the decision in *Curry*.¹ As we are able to make this determination, we need not address your claims under sections 552.101 and 552.130 of the Government Code.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 333677

Enc: Submitted documents

c: Requestor
(w/o enclosures)

¹We note that the submitted information includes the arrested person's social security number. 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.