



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 20, 2009

Ms. Lisa Tanner  
Assistant Attorney General  
Criminal Prosecution Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2009-03645

Dear Ms. Tanner:

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# 337853.

The Red River County Sheriff's Department (the "sheriff"), which you represent, received two requests from the same requestor for information relating to the arrest, indictment, and conviction of a named individual. You indicate that you will release a portion of the requested information. You claim that the remaining 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 representative sample of information.<sup>1</sup>

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if]

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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.

release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Exhibit C relates to an ongoing criminal prosecution being conducted by the Red River County Attorney Pro Tem. The Attorney Pro Tem states that release of Exhibit C would interfere with the ongoing prosecution. Based on this representation, we conclude that the release of Exhibit C would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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*. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff may withhold the information in Exhibit C under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Next, the sheriff seeks to withhold the information in Exhibit D under section 552.108(a)(4) and 552.108(b)(3) of the Government Code. These sections provide in relevant parts 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.

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<sup>2</sup>Since our ruling is dispositive, we need not address your remaining argument against disclosure of the information in Exhibit C.

(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). 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 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." *Id.* at 380 (quoting *Nat'l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). Accordingly, the court concluded that in such an instance, the district attorney's entire litigation file is privileged attorney work product. You argue that the requestor has essentially requested the entire investigative file held by the sheriff. You further argue that because the sheriff and district attorney have worked together closely on this case, the investigative file necessarily reflects the district attorney's mental impressions, opinions, legal theories, and conclusions. Upon review, we disagree. The submitted representative sample of information contains the types of documents one would expect to find in any investigative file relating to a Driving While Intoxicated charge, such as a standard incident report, intoxilyzer results, vehicle impound information, and a probable cause affidavit for an arrest warrant. There is no indication of prosecutorial involvement in the completion or assembly of these documents. We find you have not demonstrated how the submitted information would reveal the mental impressions, opinions, or legal theories of a prosecutor. Accordingly, the sheriff may not withhold Exhibit D pursuant to section 552.108 of the Government Code in conjunction with *Curry*.

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 chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to the CHRI it

generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. The CHRI you have marked in Exhibit D is confidential under section 411.083 of the Government Code, and must therefore be withheld under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Accordingly, the sheriff must withhold the driver's license, license plate, and vehicle identification information you have marked under section 552.130 of the Government Code. We have marked additional information that is subject to section 552.130 of the Government Code and must be withheld.

Finally, the remaining submitted information contains social security numbers. The social security number of a living person is excepted from public disclosure under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>3</sup> Gov't Code § 552.147(a). The sheriff may withhold the social security numbers pursuant to section 552.147 of the Government Code.

In summary, with the exception of basic information, the sheriff may withhold the information in Exhibit C pursuant to section 552.108(a)(1) of the Government Code. The sheriff must withhold the marked CHRI in Exhibit D pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff must also withhold the marked motor vehicle information in Exhibit D pursuant to section 552.130 of the Government Code. The sheriff may withhold the marked social

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<sup>3</sup>We 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.

security numbers pursuant to 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.oag.state.tx.us/open/index\\_orl.php](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 "Karen E. Stack". The signature is written in a cursive style with a large, stylized initial "K".

Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/dls

Ref: ID# 337853

Enc. Submitted documents

c: Requestor  
(w/o enclosures)