



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2009

Ms. Claire Yancey
Assistant District Attorney
Denton County Criminal District Attorney
Civil Division
P.O. Box 2850
Denton, Texas 76202

OR2009-09186

Dear Ms. Yancey:

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# 347822.

The Denton County Criminal District Attorney (the "district attorney") received a request for information relating to case number CR-90-0277-A. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Initially, we note the submitted information contains a motion for discovery that has been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under other law. You claim the court-filed document is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is

¹We 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.

²We note that you no longer assert sections 552.103, 552.107, and 552.111 for the submitted information.

discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the district attorney may not withhold the court-filed document, which we have marked, under section 552.108 of the Government Code. While sections 552.101 and 552.130 are other law for the purposes of section 552.022, upon review we find that these sections are not applicable to the information that is subject to section 552.022(a)(17). As you raise no other exception for this information, it must be released.

You assert that the remaining information is excepted from public disclosure under section 552.108 of the Government Code, which 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.

Gov't Code § 552.108(a)(4). 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 the governmental body seeks to withhold. See *id.* §§ 552.108(a)(4), .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 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 "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. As we understand your argument, you contend that the instant request for information encompasses the district attorney's entire case file concerning this case. You further state that the information at issue "represents the mental impressions or legal reasoning of an attorney representing the state." Based on these representations and our review, we agree, in accordance with the holding in *Curry*, that the remaining information

reflects the mental impressions or legal reasoning of an attorney representing the state. Therefore, we conclude that section 552.108(a)(4) is generally applicable to the remaining information.

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 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 basic information, the district attorney may withhold the remaining information based on section 552.108(a)(4) of the Government Code.³

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/dls

Ref: ID# 347822

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your other arguments against disclosure.