



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2009

Ms. Claire Yancey
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2009-10668

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# 352582.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for criminal court documents or other information related to a specific case or regarding a specific individual and all other criminal court files filed in Denton County regarding the same individual. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a document filed with a court, which is 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 a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* 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. We note that although you also raise section 552.130 of the Government Code, which is "other law" for purposes of section 552.022, the court-filed document does not contain any information covered by this exception.

Next, we will address your arguments against disclosure of the information not subject to section 522.022. 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.

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* Gov't Code §§ 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). Furthermore, 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. In this instance, the requestor asks for "[a]ny and all criminal court documents or other information that in any way relate to Cause No. CR-2006-09310-D, styled *State of Texas v. Calvin Joe Moore, Jr.*, filed in the County Criminal Court #4 of Denton County, Texas." You contend that this request encompasses the district attorney's entire case file concerning this case. You further state that the information at issue represents the prosecutor's mental impressions. 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 applicable to the remaining information.

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

Basic information includes the social security number of an arrestee. Section 552.147(a) excepts the social security number of a living person from disclosure under the Act, and 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. By its terms, this section does not apply to the social security number of a deceased individual. We note that in this case, the arrestee is now deceased. Therefore, the district attorney may not withhold the social security number belonging to the deceased individual under section 552.147 of the Government Code.

In summary, with the exception of the court-filed document and basic information, the district attorney may withhold the submitted information under section 552.108(a)(4) of the Government Code. The court-filed document and basic 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, 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 352582

Enc. Submitted documents

c: Requestor
(w/o enclosures)