



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2010

Mr. Brian L. Rose
Assistant General Counsel
Harris County District Attorney
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2010-00876

Dear Mr. Rose:

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# 367565.

The Harris County District Attorney (the "district attorney") received a request for information concerning a specified investigation and five named individuals. You state you do not maintain some of the information that is responsive to the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.119, 552.130, and 552.136 of the Government Code.² You also state that portions of the submitted information may implicate the proprietary interests of LexisNexis. You state, and provide documentation showing, you have notified LexisNexis of the request and of its opportunity to submit comments to this office as to why the information at issue should not be released to the requestor. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory

¹We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although you also raise sections 552.107, 552.111, 552.1175, and 552.137 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume that you have withdrawn these exceptions. See Gov't Code §§ 552.301, .302.

predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the district attorney failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *Id.* § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The district attorney states, and the submitted documents reflect, that the district attorney received this request for information on October 21, 2009. We note this office does not count the date the request was received or days a governmental body was closed for business as business days for the purpose of calculating a governmental body's deadlines under section 552.301. Accordingly, the tenth business day after the receipt of the instant request was November 4, 2009. The district attorney's request for a ruling from this office, which was copied to the requestor, was postmarked November 4, 2009. *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). Consequently, because the district attorney requested a ruling from this office on November 4, 2009, we find the district attorney complied with its ten-business-day deadline under section 552.301(b).

Next, we note that in a letter dated December 8, 2009, the requestor withdrew his request for information concerning two named individuals. As a result, the district attorney informed this office in a letter dated December 14, 2009 that it withdrew its request for an open records decision with regard to the portion of the submitted information regarding the personnel files of the two named individuals. Accordingly, this information, which we have marked, is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney is not required to release this information in response to this request.³

³As our determination is dispositive for the non-responsive information, we need not address your arguments against its disclosure.

Now we address the district attorney's arguments under section 552.108 of the Government Code. Section 552.108 provides in relevant 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.

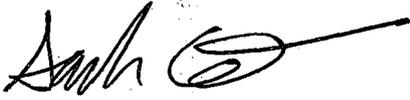
Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that 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. You assert that the present request is for the entire prosecution file for a criminal case. In addition, you assert that release of the responsive information would reveal the mental impressions or legal reasoning of prosecutors in the district attorney's office. Based on your representations, we conclude that section 552.108(a)(4) is generally applicable to the responsive information.

We note, 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 responsive information under section 552.108(a)(4) 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 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 367565

Enc. Submitted documents

c: Requestor
(w/o enclosures)