



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2013

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2013-17075

Dear Ms. Clarke:

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# 503629.

The Lubbock County District Attorney's Office (the "district attorney's office") received a request for the entire prosecution files concerning a named defendant. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the requested information relates to two closed investigations. Section 552.022(a)(1) of the Government Code provides for the required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). You raise section 552.111 of the Government Code along with the attorney work-product privilege. However, section 552.111 is a discretionary exception that protects a governmental body's interests and

¹We assume 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 those records contain substantially different types of information than those submitted to this office.

does not make information confidential under the Act. Open Records Decision Nos. 677 at 8 (2002) (attorney work-product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the district attorney's office may not withhold the requested information under section 552.111 of the Government Code. We note the attorney work-product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure, which has been held to be other law within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, those rules are applicable only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted information pertains to a criminal case, rule 192.5 is not applicable to the submitted information. Therefore, the district attorney's office may not withhold the submitted information on the basis of the work-product privilege in Texas Rule of Civil Procedure 192.5. Nonetheless, because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your assertion of that exception.

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) reflects 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. The present request is for "a complete certified copy of the State's entire criminal investigation and prosecution file" relating to a named individual and two specified cases. You assert that release of the requested information would reveal the mental impressions or legal reasoning of prosecutors in the district

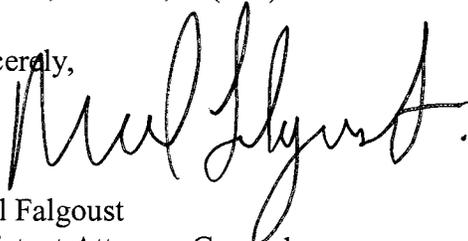
attorney's office. Based on your representations, we conclude section 552.108(a)(4) is applicable to the requested information.

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). This information includes, but is not limited to, a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 503629

Enc. Submitted documents

c: Requestor
(w/o enclosures)