



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2014

Ms. J. Macklin Milligan
Assistant District Attorney
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002

OR2014-05535

Dear Ms. Milligan:

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# 518606.

The Harris County District Attorney's Office (the "district attorney's office") received a request for all relevant evidence pertaining to specified cause numbers, including four specified items. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.1175 of the Government Code.¹ 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 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note the submitted information is part of completed investigations. Section 552.022(a)(1) of the Government Code provides for the required disclosure of "a

¹Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise in this instance because the district attorney's office does not hold the information at issue in an employment context. Additionally, although you also raise section 552.103 for the submitted information, you provide no argument explaining how this exception is applicable to the submitted information. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

Initially, we note the submitted information is part of completed 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. *Id.* § 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 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 sections 552.101, 552.108, and 552.1175 of the Government Code, we will consider your arguments for those exceptions.

We understand you to raise subsection 552.108(a)(4) of the Government Code for Appendices B-1 and B-2. Section 552.108 of the Government Code 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). You contend Appendices B-1 and B-2 constitute prosecutorial work product and include the mental impressions, conclusions, and legal theories of the prosecutor representing the state. See Gov't Code § 552.108(a)(4). Upon review, we agree the information at issue was either prepared by an attorney representing the state in anticipation of or in course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, the district attorney's office may withhold Appendices B-1 and B-2 under subsection 552.108(a)(4) of the Government Code.²

Some of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. Upon review, we find the home addresses and home telephone numbers in Appendix B-3 may consist of personal information of individuals who may be among the types of individuals listed in section 552.1175(a) and the information is not held in a law enforcement capacity. Thus, if the home addresses and home telephone numbers in Appendix B-3 relate to individuals to whom section 552.1175 applies and the individuals elect to restrict access to the information in accordance with section 552.1175(b), then the district attorney's office must withhold the home addresses and home telephone numbers under section 552.1175. If the individuals at issue are not individuals to whom section 552.1175 applies or if no election is made, the district attorney's office may not withhold the home addresses and home telephone numbers under section 552.1175 of the Government Code.

In summary, the district attorney's office may withhold Appendices B-1 and B-2 under subsection 552.108(a)(4) of the Government Code. If the home addresses and home telephone numbers in Appendix B-3 relate to individuals to whom section 552.1175 applies and the individuals elect to restrict access to the information in accordance with section 552.1175(b), then the district attorney's office must withhold the home addresses and home telephone numbers in Appendix B-3 under section 552.1175. The district attorney's office must release the remaining information.

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.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,

A handwritten signature in cursive script, appearing to read "Paige Thompson".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 518606

Enc. Submitted documents

c: Requestor
(w/o enclosures)