



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2014

Mr. Bill Delmore
Assistant District Attorney
9th Judicial District
Montgomery County
207 West Phillips, Second Floor
Conroe, Texas 77301

OR2014-05683

Dear Mr. Delmore:

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# 518905.

The 9th Judicial District Attorney's Office (the "district attorney's office") received a request for "the complete file" for a specified cause number. 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 information you submitted.

We first note the submitted information falls within the scope of section 552.022(a) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Thus, as you state the submitted information consists of records of a completed investigation made by or for the district attorney's office, the information at issue is subject to section 552.022(a)(1). Although you seek to withhold the submitted information under section 552.111 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions

generally). As such, section 552.111 does not make information confidential for purposes of section 552.022(a)(1). Therefore, the district attorney's office may not withhold any of the submitted 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 have been held to be "other law" for purposes of section 552.022(a). *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Those rules are only applicable, however, to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, rule 192.5 is not applicable to the records of a criminal case, and the district attorney's office may not withhold any of the submitted information on the basis of Texas Rule of Civil Procedure 192.5. Because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your claim under that exception.

Next, we note the submitted information contains the requestor's fingerprints. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides, in part, "[i]n this chapter . . . '[b]iometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.003 provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. However, section 560.002 of the Government Code provides, "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, section 552.002(1)(A) gives an individual a right of access to his own fingerprint information. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, we note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the district attorney's office must release the submitted fingerprints, which we have marked, to this requestor under section 560.002 of the Government Code.

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 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. In this instance, the requestor seeks access to the district attorney's office's "complete file" for the specified cause number. You state disclosure of the entire contents of the prosecution file would reveal the prosecutor's legal reasoning and thought processes. Based on your representations and our review, we conclude section 552.108(a)(4) is applicable to the remaining information.

We note 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). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-188 (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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the remaining submitted information under section 552.108(a)(4) of the Government Code and the decision in *Curry*.

In summary, the district attorney's office must release the marked fingerprints under section 560.002 of the Government Code. With the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code and the decision 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,

A handwritten signature in black ink, appearing to read "Rashandra C. Hayes". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke extending to the right.

Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

Ref: ID# 518905

Enc. Submitted documents

c: Requestor
(w/o enclosures)