



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2014

Ms. Myrna S. Reingold
Legal Department
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2014-19957

Dear Ms. Reingold:

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# 541986.

The Galveston County District Attorney's Office (the "district attorney's office") received two requests for all information related to a specified case investigated by the district attorney's office. You indicate you have released some information to the requestors with some information redacted pursuant to sections 552.130, 552.136, and 552.147 of the Government Code and section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim some information is not subject to the Act. You claim

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in sections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). 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. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state portions of the submitted information you have marked are not responsive to the requests for information. However, upon review, we find the information at issue is related to the investigation of the specified incident. Accordingly, we find this information is responsive to the instant requests and must be released unless an exception to disclosure applies.

Next, you inform us, and provide documentation demonstrating, the information you have marked was obtained through a grand jury subpoena and was obtained by the district attorney's office at the direction of the grand jury. You indicate this information is held by the district attorney's office acting as an agent of the grand jury and is in the constructive possession of the grand jury. Accordingly, we find the information you have marked, and the additional information we have marked, consist of records of the judiciary that are not subject to release under the Act, and the district attorney's office need not release this information in response to this request. *See Gov't Code §§ 552.003(1)(B) (Act's definition of governmental body does not include judiciary), .0035 (access to information collected, assembled, or maintained by or for judiciary is governed by rules adopted by Supreme Court of Texas or other applicable laws and rules); Open Records Decision No. 513 at 3 (1988) (information held by grand jury, which is extension of judiciary for purposes of Act, is not itself subject to Act).*²

Section 552.108 of the Government Code provides, in part, as follows:

(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.

²As we make this determination, we need not address your remaining arguments against disclosure of this information.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(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), (b)(3). 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 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), 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. You indicate the instant requests for information encompass the entire prosecution file of the district attorney's office for the specified case. Further, you state the information at issue reflects the mental impressions or legal reasoning of an attorney representing the state. Thus, upon review, we conclude sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to the information you have marked. Therefore, the district attorney's office may withhold the information you have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.³

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that other statutes make confidential. Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note common-law privacy protects the interests of individuals. *See* Open Records Decision No. 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests). You indicate some of the remaining information is subject to common-law privacy. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, the first requestor is an authorized representative of one of the individuals whose information is at issue. Accordingly, the first requestor has a special right of access under section 552.023 of the Government Code to the information pertaining to his client, and the district attorney's office may not withhold this information from the first requestor under section 552.101 in conjunction with common-law privacy. *See id.* § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the district attorney's office must withhold from the second requestor the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). We note section 552.130 protects personal privacy. As noted above, the first requestor is an authorized representative of one of the individuals whose information is at issue, has a special right of access to his client's motor vehicle record information. *See* Gov't Code § 552.023; *see also* ORD 481 at 4. Accordingly, the district attorney's office may not withhold the motor vehicle record information you have marked, and the additional information we have marked and indicated, that are related to the first requestor's client under section 552.130. However, the district attorney's office must continue to withhold the motor vehicle record information not related to the first requestor's client from the first requestor under section 552.130. In any event, there is no indication the second requestor has a right of access to any of the motor vehicle record information marked under section 552.130 of the Government Code. Thus, the district attorney's office must withhold from the second requestor the motor vehicle record information you have marked, and the additional information we have marked and indicated, under section 552.130 of the Government Code.

In summary, the information you have marked, and the additional information we have marked, consist of records of the judiciary that are not subject to release under the Act, and the district attorney's office need not release this information in response to this request. The district attorney's office may withhold the information you have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*. The district attorney's office must withhold from the second requestor the information we have marked under section 552.101 of the Government Code in conjunction

with common-law privacy. The district attorney's office must withhold from the first requestor the motor vehicle record information you have marked, and the additional information we have marked and indicated, that are not related to the first requestor's client under section 552.130 of the Government Code. The district attorney's office must withhold all of the motor vehicle record information you have marked, and the additional information we have marked and indicated, from the second requestor under section 552.130 of the Government Code. The remaining information must be released.⁴

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,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 541986

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁴We note the first requestor has a special right of access to some of the information being released. See Gov't Code § 552.023; ORD 481 at 4. Because such information is confidential with respect to the general public, if the district attorney's office receives another request for this information from a different requestor, the district attorney's office must again seek a ruling from this office.