



January 26, 2015

Mr. Bill Delmore
Assistant District Attorney
County of Montgomery
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2015-01397

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# 551499.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for all information pertaining to a specified offense. You state the district attorney's office has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information may consist of information obtained pursuant to grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). Thus, to the extent the records at issue are in the custody of the district attorney's office as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. However, to the extent this information is not in the custody of the district attorney's office as an agent for the grand jury, we will address your arguments against disclosure of this information.

We note the submitted information contains an ST-3 accident report. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by

law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by statute, such as section 550.065 of the Transportation Code. Section 550.065 provides, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the district attorney’s office with two of the three requisite pieces of information specified by the statute. Accordingly, the district attorney’s office must withhold the ST-3 accident report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation 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) 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.* §§ 552.108, .301(e)(1)(A); *see also 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) (orig. proceeding), 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 contend the request encompasses the district attorney’s office’s entire prosecution file for the case at issue. In addition, you contend release of the information at issue would reveal the mental impressions or legal

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).*

reasoning of prosecutors in the district attorney's office. Based on the your representations and our review, we agree section 552.108(a)(4) is applicable to the remaining information.

Section 552.108, however, 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*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state you have released, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.²

In summary, to the extent the grand jury records at issue are in the custody of the district attorney's office as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. The district attorney's must withhold the ST-3 accident report we have marked under section 552.101 in conjunction with 550.065(b) of the Transportation Code. With the exception of basic information, which you state you have released, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

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²We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a government 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. Gov't Code § 552.147(b).

Ref: ID# 551499

Enc. Submitted documents

c: Requestor
(w/o enclosures)