



February 20, 2015

Ms. Elizabeth Hanshaw Winn  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR2015-03400

Dear Ms. Winn:

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# 554572.

The Travis County District Attorney's Office (the "district attorney's office") received a request for a full copy of the district attorney's office's investigative file related to a specified incident. You claim some of the submitted information is not subject to the Act. Additionally, you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, and 552.134 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you assert some of the submitted information consists of a grand jury subpoena and information obtained pursuant to a grand jury subpoena. 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

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<sup>1</sup>We 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 that submitted to this office.

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 consider your arguments against its disclosure.

Section 552.108 of the Government Code states in pertinent part the following:

(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.

...

(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 claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (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, 460 (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." 873 S.W.2d at 380. You state the request for information encompasses the entire prosecution file of the district attorney's office for multiple cases. In addition, you assert release of the information at issue would reveal the mental impressions or legal reasoning of prosecutors in the district attorney's office. Thus, upon review, we conclude subsections 552.108(a)(4) and (b)(3) of the Government Code are applicable to the information at issue.

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 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). *See* 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, the district attorney's office may withhold the submitted information under subsections 552.108(a)(4) and (b)(3) of the Government Code and the court's ruling in *Curry*.<sup>2</sup>

In summary, to the extent the district attorney's office holds the information you have marked as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the district attorney's office is not required to release that information in response to the instant request. With the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under subsections 552.108(a)(4) and (b)(3) 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/>

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<sup>2</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure.

[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 "N. A. Ybarra". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/cbz

Ref: ID# 554572

Enc. Submitted documents

c: Requestor  
(w/o enclosures)