



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2015

Mr. G. Brian Garrison
Assistant District Attorney
Dallas County
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2015-09530

Dear Mr. Garrison:

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# 563870.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for any and all records pertaining to a specified case number. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.1325, and 552.147 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted information.

We note the submitted information includes information subject to section 552.022(a)(17) of the Government Code, which provides for required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although the district attorney's office seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver).* Therefore, the district attorney's office may not withhold the information subject to section 552.022, which we have marked, under section 552.108. The district attorney's office also raises section 552.101 of the Government

Code in conjunction with common-law privacy for the information at issue. However, we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the district attorney's office may not withhold the information subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. However, constitutional privacy can make information confidential for purposes of section 552.022. Accordingly, we will address the district attorney's office's argument the information subject to section 552.022 must be withheld on this basis. We will also address the district attorney's office's argument under section 552.108 of the Government Code for the information not subject to section 552.022.

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.

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 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. The district attorney's office states the instant request for information encompasses the district attorney's office's entire prosecution file on a named individual regarding a specified case. Further, the district attorney's office asserts the information at issue was created or assembled in the course of preparing for criminal litigation and release of the information would reveal the mental impressions and legal reasoning of a prosecutor

in the district attorney's office. Thus, upon review, we conclude section 552.108(a)(4) of the Government Code is applicable to the remaining information.

However, as the district attorney's office acknowledges, section 552.108 of the Government Code 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 also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include the identities of victims, witnesses, or other involved parties, but does include an arrestee's social security number. Therefore, with the exception of basic information, the district attorney's office may withhold the remaining information pursuant to sections 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the district attorney's office has failed to demonstrate how any of the information subject to section 552.022 falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the district attorney's office may not withhold any of this information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Accordingly, the district attorney's office may withhold the arrestee's social security number within the basic information under section 552.147 of the Government Code.

¹As our ruling is dispositive, we need not address the district attorney's office's remaining arguments against disclosure of this information.

In summary, the district attorney's office must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*. The district attorney's office may withhold the arrestee's social security number within the basic information under section 552.147 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 563870

Enc. Submitted documents

c: Requestor
(w/o enclosures)