



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2015

Ms. Laura Anne Coats
Assistant District Attorney
Dallas County Criminal District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2015-13243

Dear Ms. Coats:

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# 569635.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for the complete files for two specified case numbers. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 you seek 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.

¹We 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.

However, you also seek to withhold the court-filed documents under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As section 552.101 makes information confidential, we will address the applicability of this exception to the court-filed documents, as well as the remaining information. We will also address your argument under section 552.108 of the Government Code for the information not subject to section 552.022.

Section 552.101 of the Government Code encompasses section 58.007(c) of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant part of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find none of the submitted information constitutes confidential law enforcement records under section 58.007(c) because it does not involve a child offender as defined by section 51.02(2), and none of it may be withheld under section 552.101 on that basis.

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. You state the instant request for information encompasses the entire prosecution file of the district attorney's office. Further, the district attorney's office asserts the information at issue was created or assembled in the course of preparing for criminal litigation. Thus, upon review, we conclude section 552.108(a)(4) of the Government Code is applicable to the remaining information.

However, 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 includes the identity and description of the complainant, but does not include the identities of victims, witnesses, or other involved parties, or information subject to section 552.130 of the Government Code. *See* ORD 127 at 3-4. 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*.²

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*.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information. We 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).

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 569635

Enc. Submitted documents

c: Requestor
(w/o enclosures)