



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2015

Mr. William Schultz  
Assistant District Attorney  
Civil Division  
County of Denton  
1450 East McKinney Street, Suite 3100  
Denton, Texas 76209

OR2015-25648

Dear Mr. Schultz:

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# 589757.

The Denton County Fire Marshal's Office (the "fire marshal's office") received a request for the fire marshal's office's fire report related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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:

...

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<sup>1</sup>Although the fire marshal's office also raises sections 552.101 and 552.103 of the Government Code, the fire marshal's office has not provided any arguments to support these exceptions. Therefore, we assume the fire marshal's office has withdrawn its claim sections 552.101 and 552.103 apply to the submitted information. See Gov't Code §§ 552.301, .302.

(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 the requirements of Section 552.021 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. However, a party is not prevented from requesting specific documents or categories of documents relevant to issues in a pending case, even though some or all of the documents may be contained in an attorney's files. *National Union*, 863 S.W.2d at 461.

You claim the instant request for information seeks the entire prosecution file of the Denton County District Attorney's Office' (the "district attorney's office") for the specified incident. Upon review, we find the requestor seeks a specific category of information related to the specified incident, and is seeking information from the fire marshal's office, not the district attorney's office. Such a request does not constitute a request for the "entire" file of the district attorney's office. Thus, we conclude the present request is not a request for the entire

prosecution file of the district attorney's office for the specified incident. As a result, the fire marshal's office may not withhold the submitted information under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code and the holding in *Curry*.

You also contend the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state submitted information pertains to an "investigation that is currently pending." *See generally* Open Records Decision No. 127 (1976) (providing that an arson investigation unit of a fire department is considered a law enforcement agency for purposes of section 552.108 of the Government Code). We note, however, section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. Thus, you have not demonstrated that this information falls within the scope of section 552.108(a)(2). We therefore conclude the fire marshal's office may not withhold any of the submitted information under section 552.108 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). The fire marshal's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>2</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The fire marshal's office must withhold the information we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). The fire marshal's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we agree the fire marshal's office may withhold the social security numbers in the remaining information under section 552.147 of the Government Code.

In summary, the fire marshal's office must withhold the information we have marked and indicated under sections 552.130 and 552.136 of the Government Code. The fire marshal's office must withhold the information we have marked under section 552.137 of the Government Code unless the owner of the e-mail address affirmatively consents to its release. The fire marshal's office may withhold the social security numbers in the remaining information under section 552.147 of the Government Code. The fire marshal's office must release the remaining information.

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](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 Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 589757

Enc. Submitted documents

c: Requestor  
(w/o enclosures)