



January 12, 2015

Mr. Andrew Warthen  
Assistant Criminal District Attorney  
Civil Section  
Bexar County District Attorney's Office  
300 Dolorosa, 5th Floor  
San Antonio, Texas 78205

OR2015-00559

Dear Mr. Warthen:

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# 550204.

The Bexar County District Attorney's Office (the "district attorney's office") received a request for all information related to a specified arrest. You state the district attorney's office released some information to the requestor with redactions pursuant to sections 552.130(c) and 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

from disclosure under section 552.108 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the 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). The court-filed documents we have marked are subject to section 552.022(a)(17) and must be released unless they are confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney's office may not withhold the information that is subject to section 552.022(a)(17) under section 552.108. We note these documents contain information that is subject to section 552.130 of the Government Code, which makes information confidential under the Act.<sup>4</sup> Thus, we will address the applicability of this exception to the information that is subject to section 552.022(a)(17). Additionally, we will address your argument under section 552.108 for the information that is not subject to section 552.022(a)(17).

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:

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<sup>2</sup>Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

<sup>3</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

<sup>4</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).

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents 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). 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 held that "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 (internal quotations omitted) (quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993)). You argue, and we agree, the request for information encompasses the entire prosecution file of the district attorney's office for the specified incident. You argue the release of the information at issue would reveal the prosecutor's legal reasoning and thought processes. Based on your representations and our review, we conclude section 552.108(a)(4) is applicable to the information that is not subject to section 552.022(a)(17) of the Government Code.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to basic "front-page" information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. 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 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state the district attorney's office has released, the district attorney's office may withhold the information that is not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.<sup>5</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we conclude the district attorney's office must withhold the information we have marked under section 552.130.

In summary, with the exception of the information that is subject to section 552.022(a)(17) of the Government Code and the basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code and

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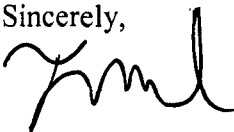
<sup>5</sup>As our ruling is dispositive, we need not address your argument under section 552.108(a)(1) of the Government Code.

the court's ruling in *Curry*. The district attorney's office must withhold the information we have marked under section 552.130 of the Government Code. The district attorney'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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized, cursive script.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 550204

Enc. Submitted documents

c: Requestor  
(w/o enclosures)