



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2016

Mr. Ricardo Vela, Jr.
Assistant District Attorney
Dallas County Criminal District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207

OR2016-19447

Dear Mr. Vela:

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# 624383.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for all information pertaining to two specified convictions of the requestor's client. You state the district attorney's office does not have information pertaining to one of the convictions at issue¹. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, portions of which consist of representative samples of information.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation subject to section 552.022(a)(1). The district attorney's office must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.103 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. However, you also raise sections 552.101 and 552.130 of the Government Code for the submitted information. We note these sections can make information confidential under the Act. Accordingly, we will consider your arguments under sections 552.101, 552.108, and 552.130 for the submitted information.

Section 552.108 of the Government Code provides, in relevant 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.

(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 must 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 for a specified case against the requestor's client. Further, you assert the submitted information reflects the mental impressions or legal reasoning of attorneys representing the state. Thus, upon review, we conclude sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to the information at issue. Therefore, the district attorney's office may generally withhold the information at issue under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.

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). 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, among other things, an arrestee's social security number and home address, but does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* at 3-4. Therefore, with the exception of basic information, the district attorney's office may withhold the submitted information

pursuant to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.³

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 624383

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains a social security number subject to section 552.147 of the Government Code. 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 officer under the Act. Gov't Code § 552.147(b).