



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2017

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

OR2017-07963

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# 653474 (PIR #17-015).

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for any information in the district attorney's office's file pertaining to a specified case. You state you released some information to the requestor. We understand you will redact information pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101,

¹Section 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 Gov't Code § 552.147(b).

552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

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:

...

(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

²We note the district attorney's office failed to timely raise section 552.130 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, because section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

³We 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.

(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. You state the instant request for information encompasses the district attorney's office's entire prosecution file. You argue release of the information at issue would reveal the mental impressions or legal reasoning of prosecutors in the district attorney's office. Upon review, we agree the request seeks the entire prosecution file of the district attorney's office. Accordingly, we conclude sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to the submitted information.

We note, 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*. *See* 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 made public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state you released, the district attorney's office may withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.⁴

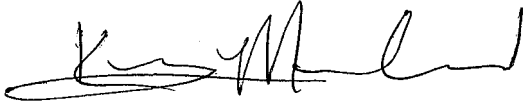
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 'Kenny Moreland', written over a horizontal line.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 653474

Enc. Submitted documents

c: Requestor
(w/o enclosures)