



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Mr. Bill Delmore
Chief
Legal Services Bureau
Montgomery County
9th Judicial District
207 West Phillips, 2nd Floor
Conroe, Texas 77301-2824

OR2017-09869

Dear Mr. Delmore:

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# 656927.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for all information regarding two specified cause numbers. You claim that the submitted information is exempted from disclosure pursuant to sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is exempted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). You raise section 552.111 of the Government Code for this information. However, section 552.111 does not make information confidential under the Act. *See* Open Records Decision Nos. 677 at 8 (2002) (attorney work-product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the district attorney's office may not withhold the requested information under section 552.111 of the Government Code. Nevertheless, section 552.111 encompasses the attorney work-product privilege, which is found at rule 192.5 of the Texas Rules of Civil Procedure. This rule is "other law" that makes information confidential within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). We note, however, that the Texas Rules of Civil

Procedure are only applicable to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Therefore the district attorney’s office may not withhold the submitted information on the basis of rule 192.5. You also raise section 552.108 of the Government Code for the requested information. As section 552.022(a)(1) allows for information subject to this provision to be withheld under section 552.108, we will consider your assertion of that exception.

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 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 claiming an exception to disclosure under section 552.108 must 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 request for information encompasses the entire prosecution files of the district attorney's office for the specified criminal prosecutions. You further state the submitted information reflects the mental impressions or legal reasoning of prosecutors representing the state. Thus, upon review, we conclude subsections 552.108(a)(4) and (b)(3) of the Government Code are applicable to the information at issue.

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 Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under subsections 552.108(a)(4) and (b)(3) of the Government Code and the court's ruling in *Curry*.¹

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/tdw

¹ As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

Ref: ID# 656927

Enc. Submitted documents

c: Requestor
(w/o enclosures)