



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 25, 2017

Mr. Bill Delmore
Assistant District Attorney
Montgomery County
207 West Phillips, 2nd Floor
Conroe, Texas 77301-2824

OR2017-19454

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# 673179.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for a specified litigation file. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-14089 (2017). In Open Records Letter No. 2017-14089, we concluded the district attorney's office must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code; and, with the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(4) and (b)(3) of the Government Code and the court's ruling in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). We understand the law, facts, and circumstances on which the prior ruling was

¹We 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.

based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the district attorney's office may continue to rely on Open Records Letter No. 2017-14089 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information is not identical to the information at issue in Open Records Letter No. 2017-14089, we will address your arguments against its disclosure.

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*, 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." *Curry*, 873 S.W.2d at 380. You state the request for information encompasses the entire prosecution file of the district attorney's office for the specified case. You further state the information at issue reflects the mental impressions or legal reasoning of an attorney representing the state in the case at issue. Thus, upon review, we conclude sections 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, the district attorney's office may withhold the remaining information under sections 552.108(a)(4) and (b)(3) of the Government Code and the court's ruling in *Curry*.

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the district attorney's office may continue to rely on Open Records Letter No. 2017-14089 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under sections 552.108(a)(4) and (b)(3) of the Government Code and the court's ruling in *Curry*.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/bw

Ref: ID# 673179

Enc. Submitted documents

c: Requestor
(w/o enclosures)