



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 1, 2017

Mr. William Schultz
Assistant District Attorney
Civil Division
Denton County Criminal District Attorney's Office
1450 East McKinney, Suite 3100
Denton, Texas 76209

OR2017-20062

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# 674619 (PIR #17-101).

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for all information pertaining to a specified case. You state the district attorney's office has released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government 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:

(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.* §§ 552.108, .301(e)(1)(A); *see also 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) (orig. proceeding), 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 (internal quotations omitted). The present request seeks the district attorney's office's file on the specified case. You state the information at issue consists of internal records and notations prepared by a prosecutor for the district attorney's office in the course of preparing for criminal litigation. You inform us this information reflects the mental impressions and legal theories of an attorney representing the state. Upon review, we find the information at issue reflects the mental impressions or legal reasoning of an attorney representing the state. Accordingly, the district attorney's office may withhold the information you have indicated, which we have marked, under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 560.003 of the Government Code, which provides that "[a]

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

biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprints we have marked constitute biometric identifiers for purposes of section 560.003. Accordingly, the district attorney’s office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

In summary, the district attorney’s office may withhold the information you have indicated, which we have marked, under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court’s ruling in *Curry*. The district attorney’s office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 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, 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 674619

Enc. Submitted documents

c: Requestor
(w/o enclosures)