



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2017

Mr. Ricardo Vela, Jr.
Assistant District Attorney
County of Dallas
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2017-27208

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# 687139.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for all records related to case number F1449283. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.130, and 552.147 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted information.

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 that is subject to section 552.022(a)(1). The district attorney's office must release the completed investigation pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* § 552.022(a)(1). The district attorney's office seeks to

withhold the submitted information under section 552.107 and the attorney work product privilege of section 552.111 of the Government Code. However, sections 552.107 and 552.111 are discretionary in nature and do not make information confidential under the Act. *See* Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district attorney's office may not withhold the submitted information under section 552.107 or section 552.111 of the Government Code. The Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider the district attorney's office's assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence. We note the attorney work-product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure. However, the Texas Rules of Civil Procedure are applicable only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted information pertains to a criminal case, rule 192.5 is not applicable to the submitted information and the district attorney's office may not withhold any portion of the submitted information on the basis of the attorney work-product privilege in Texas Rule of Civil Procedure 192.5. As information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider the district attorney's office's argument under section 552.108 for the information at issue. Further, because sections 552.101 and 552.130 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the submitted information.

Section 552.108 of the Government Code 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.

Gov't Code § 552.108(a)(4). 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. The district attorney's office states the instant request for information encompasses the district attorney's office's entire prosecution file. Thus, the district attorney's office argues release of the information at issue would reveal the mental impressions or legal reasoning of prosecutors. Based on these representations and our review of the submitted information, we agree section 552.108(a)(4) is applicable to the submitted information.

However, we note 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*). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code.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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

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

Ref: ID# 687139

Enc. Submitted documents

c: Requestor
(w/o enclosures)