



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2017

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

OR2017-29112

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# 689196.

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

Initially, we note the submitted information includes the blood test results of the requestor's client. Full information concerning the analysis of the specimen must be made available upon the request of the person who has given the specimen at the request of a peace officer. *See* Transp. Code § 724.018. Here, the requestor represents the individual who submitted the specimen. The district attorney's office seek to withhold this information under section 552.108 of the Government Code. However, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome

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.

general exception to disclosure under the Act). Thus, the district attorney's office must release the blood test results, which we have marked, to this requestor pursuant to section 724.018 of the Transportation Code.

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

(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 reasonably 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 contends the request encompasses its entire prosecution file for the case at issue. In addition, the district attorney’s office states release of the information at issue would reveal the mental impressions or legal reasoning of prosecutors in the district attorney’s office. Based on the district attorney’s office’s representations and our review, we agree sections 552.108(a)(4) and 552.108(b)(3) are applicable to the remaining information.

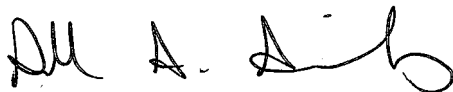
Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (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 remaining information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

In summary, the district attorney’s office must release the marked blood test results pursuant to section 724.018 of the Transportation Code. 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 552.108(b)(3) of the Government Code.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 689196

Enc. Submitted documents

c: Requestor
(w/o enclosures)