



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2019

Ms. Laura Anne Coats
Assistant District Attorney
Dallas County
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2019-01519

Dear Ms. Coats:

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# 746548.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified automobile crash. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not make information confidential for the purposes of section 552.022. Accordingly, the district

attorney's office may not withhold the court-filed documents, which we marked, under section 552.103 or section 552.108. Further, although you also seek to withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the marked court-filed documents also may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note a portion of the court filed documents are subject to section 552.130, which makes information confidential under the Act. Therefore, we will address the applicability of section 552.130 to the information subject to section 552.022(a)(17) of the Government Code. We will also address your arguments for the information not subject to section 552.022 of the Government Code.

Section 552.108 of the Government Code provides, in relevant 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

...

(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)(1), (a)(4), (b)(1), (b)(3). A governmental body raising section 552.108 must explain the applicability of that section. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You argue the information at issue is subject to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code in conjunction with *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). In *Curry*, the Texas Supreme Court held that 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) 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). You contend the instant request for information seeks the district attorney's office's entire prosecution file for the case at issue. However, we disagree the requestor seeks the entire prosecution file. Rather, the requestor seeks specific information held by the district attorney's office. Such a request does not constitute a request for the "entire" file. Thus, we conclude the present request is not a request for the entire prosecution file of the district attorney's office. As a result, the district attorney's office may not withhold the remaining information not subject to section 552.022 of the Government Code under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code and the holding in *Curry*.

You also argue the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code. A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to a pending criminal prosecution and that release of this information would interfere with the pending prosecution. We note, however, the remaining information includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The DIC-24 and DIC-25 forms were provided to the arrestee. Thus, we find you failed to demonstrate release of this information, which was provided to the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Further, you have not demonstrated release of these forms would interfere with law enforcement or prosecution. *See id.* § 552.108(a)(1). Therefore, the DIC-24 and DIC-25

forms may not be withheld under section 552.108(a)(1) or section 552.108(b)(1). However, based upon your representations and our review, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 77 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 976). Thus, section 552.108(a)(1) of the Government Code is applicable to the remaining information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of the information subject to section 552.022 of the Government Code, the DIC-24 and DIC-25 forms, and basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

Next, we address your argument under section 552.103 of the Government Code against release of the DIC-24 and DIC-25 forms. Section 552.103 provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through the discovery process. See ORD 551 at 4-5. Thus, any information obtained from or provided to all other parties in the anticipated or pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. As noted above, the submitted DIC-24 and DIC-25 forms were provided to the arrestee. Therefore, the district attorney's office may not withhold the DIC-24 and DIC-25 forms under section 552.103 of the Government Code.

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 the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Accordingly, in releasing the DIC-24 and DIC-25 forms, the district attorney's office must withhold the public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Accordingly, in releasing the DIC-24 and DIC-25 forms and the information subject to section 552.022 of the Government Code, the district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

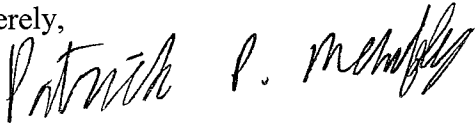
In summary, with the exception of the information subject to section 552.022(a)(17) of the Government Code, the DIC-24 and DIC-25 forms, and basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the DIC-24 and DIC-25 forms, the district attorney's office must withhold the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. In releasing the information subject to section 552.022(a)(17) of the Government Code and the DIC-24 and

DIC-25 forms, the district attorney's office must withhold the information we marked under section 552.130 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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/mo

Ref: ID# 746548

Enc. Submitted documents

c: Requestor
(w/o enclosures)