



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 7, 2019

Ms. Elizabeth Stevens  
Assistant General Counsel  
Harris County District Attorney's Office  
500 Jefferson Street, Suite 600  
Houston, Texas 77002

OR2019-06426

Dear Ms. Stevens:

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# 754013.

The Harris County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for all records regarding a specified individual, including the entire file regarding the arrest of the specified individual, certain employment records regarding two other named individuals during stated time periods, and certain communications regarding specified topics during stated time periods. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.130 of the Government Code.<sup>1</sup> Additionally, you state release of the information at issue may implicate the privacy interests of a named individual. Accordingly, you state, and provide documentation showing, the district attorney's office notified the individual of the request for information pursuant to section 552.304 of the Government Code.<sup>2</sup> *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why

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<sup>1</sup>Although you also raise sections 552.103 and 552.111 of the Government Code, you provide no arguments explaining how these exceptions are applicable to the information at issue. Therefore, we assume you no longer assert these exceptions. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>As of the date of this letter, we have not received comments from the named individual.

information should or should not be released). We have considered the your arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we understand you to contend some of the submitted information consists of information obtained pursuant to grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. *Id.* § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the district attorney's office holds the information obtained through grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the district attorney's office is not required to release that information in response to the instant request.<sup>4</sup> To the extent the district attorney's office holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your arguments against its disclosure.

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

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<sup>3</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

<sup>4</sup>In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(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) (quoting *National Union*, 863 S.W.2d at 460). You state the requests for information encompasses the entire prosecution files of the district attorney's office for specified cases. You state the submitted information consists of internal records and notations prepared by attorneys representing the state in the course of preparing for criminal litigation or consists of the mental impressions or legal theories of attorneys representing the state. Based on these representations and our review, we agree sections 552.108(a)(4) and section 552.108(b)(3) of the Government Code are applicable to the information at issue.

We note, 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*. *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*). We note basic information includes, among other items, a detailed description of the offense, but does not include, among other items, motor vehicle record information encompassed by section 552.130 of the Government Code, information related to witnesses or victims who are not the complainant, the social security number of the complainant, or dates of birth. *See id.* at

3-4. Accordingly, with the exception of basic information, the district attorney's office may withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the holding in *Curry*.<sup>5</sup>

Section 552.101 of the Government Code excepts from public 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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense).

Upon review, we find the basic information includes a victim's identifying information. This information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some of the basic information identifies a victim who has been de-identified by the use of a pseudonym. Thus, in this instance, the victim's privacy is sufficiently protected, and the district attorney's office may not withhold the pseudonym of the victim at issue under section 552.101 of the Government Code on the basis of common-law privacy. Accordingly, in releasing the basic information, the district attorney's office must withhold the identity of the victim not identified solely by a pseudonym, which we indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining basic information is highly intimate or embarrassing and not of legitimate public concern. Therefore, we conclude the remaining basic information is not confidential under common-law privacy, and the district attorney's office may not withhold it under section 552.101 on that ground.

In summary, to the extent the district attorney's office holds the information obtained through grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the district attorney's office is not required to release that information in response to the instant request. With the exception of basic information, which the district attorney's office must release, the district attorney's office may withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. In releasing the basic information, the district attorney's office must withhold the identity of the victim not

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

identified solely by a pseudonym we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

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](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,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/gw

Ref: ID# 754013

Enc. Submitted documents

c: Requestor  
(w/o enclosures)