



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2019

Ms. Allison Falls Coselli
Assistant General Counsel
Harris County
500 Jefferson, Suite 600
Houston, Texas 77002

OR2019-11752

Dear Ms. Coselli:

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# 763199.

The Harris County District Attorney's Office (the "district attorney's office") received a request for all files pertaining to the requestor's client, including a specified case. You state the district attorney's office has destroyed some of the requested information pursuant to its records retention schedule.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides, in pertinent part, the following:

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). 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 held that "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 Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993)).

The present request seeks the files of the district attorney's office on the requestor's client. You assert the request is for the entire prosecution file of the district attorney's office for the submitted case, in which the requestor's client was convicted. You indicate 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 your representations and our review, we conclude section 552.108(a)(4) of the Government Code is applicable to the submitted information.

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). Section 552.108(c) refers to basic "front-page" information held to be public in *Houston Chronicle Publishing Company 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 considered to be basic information). We note that basic information described in *Houston Chronicle* includes an arrestee's social security number, but does not include dates of birth, motor vehicle record information, or the home

address or home telephone number of a complainant. *Id.* Thus, with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(4) and the court's ruling in *Curry*.²

We note the basic information includes the arrestee's social security number. 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 that other statutes make confidential, such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We note, however, that the laws making social security numbers confidential are based on privacy concerns. Section 552.023 of the Government Code gives a person or the person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information. *See* Gov't Code § 552.023. Thus, the requestor has a special right of access to her client's social security number, and the district attorney's office may not withhold that information from her under section 552.101 in conjunction with the federal law. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

In summary, 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 and the court's ruling in *Curry*.³

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.

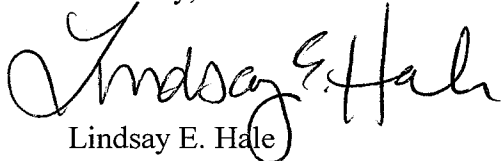
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³Although the requestor is a representative of the Federal Public Defender, Middle District of Tennessee, she does not indicate she has a right of access to the information at issue under state or federal law. *See* Open Records Decision Nos. 598(1991), 583(1990), 451 (1986).

[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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/mo

Ref: ID# 763199

Enc. Submitted documents

c: Requestor
(w/o enclosures)