



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 17, 2022

Mr. Matthew R. Entsminger
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2022-04830

Dear Mr. Entsminger:

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# 932145.

The Travis County Attorney's Office (the "county attorney's office") received a request for information related to a specified cause number. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes a court-filed document that is subject to section 552.022(a)(17) of the Government Code, which provides for required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code, this is a discretionary exception to disclosure and does not make information confidential under the Act. *See* 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 section 552.108 subject to waiver). Thus, the information subject to section 552.022(a)(17), which we marked, may not be withheld under section 552.108 of the Government Code. However, we will consider the submitted arguments for the remaining information not subject to section 552.022(a)(17) of the Government Code.

Section 552.108 of the Government Code provides, in relevant part, as follows:

(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 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. The present request is for all documents related to a specified cause number. You contend the request encompasses the entire prosecution file of the county attorney's office for the cause number at issue. In addition, you assert release of the remaining information would reveal the prosecutor's legal reasoning and thought process. Based upon your representations and our review, we agree sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to the remaining 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*, 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 considered to be basic information). Thus, with the exception of basic information, which must be released, the county attorney's office may withhold the remaining information not subject to section 552.022(a)(17) of the Government Code under sections 552.108(a)(4) and 552.108(b)(3) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Amy Shipp
Assistant Attorney General
Open Records Division

ALS/jm

Ref: ID# 932145

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this s