



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 22, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1910

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29386.

The Travis County District Attorney's Office (the "district attorney") has received a request for "copies of any and all documents and files in [its] possession" regarding "D.A. Case Number 934975," a closed criminal investigation. You have submitted the requested information to us for review (Exhibits A, B, C, and D) and claim that sections 552.101, 552.103, and 552.111 of the Government Code except it from required public disclosure.

We first address your contention that section 552.111 in conjunction with the attorney work-product doctrine excepts all of the requested information from disclosure. This office recently issued Open Records Decision No. 647 (1996), holding that a governmental body may withhold information under section 552.111 of the Government Code if the governmental body can show (1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5. The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (citing *United States v. Nobles*, 422 U.S. 225, 236 (1975)). In *Curry*, the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), 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." Because the requestor in this instance seeks "copies of any and all documents and files in [its] possession" regarding a particular case, we agree that you may withhold all of the requested information pursuant to section 552.111 of the Government Code as attorney work product. However, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 29386

Enclosures: Submitted documents

cc: Mr. Gregory D. Jordan
Taylor, Dunham & Jordan
301 Congress Avenue, Suite 1400
Austin, Texas 78701
(w/o enclosures)

¹As we resolve this matter under section 552.111, we need not address the other exceptions you have raised. We note, however, that some of the information submitted to this office for review *is* confidential by various confidentiality provisions, the release of which may constitute a criminal offense. See Gov't Code § 552.352.