



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 22, 1998

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

OR98-1024

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34709.

Travis County (the "county") received a request for a record of all disbursements from the district attorney's office to certain out-of-state witnesses in *State v. Kenneth Lane Denton*, cause number 92-2838. You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. You have submitted samples of the requested information to this office for review. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." We understand from your arguments that appeal of the criminal prosecution is still pending and that you contend that releasing the submitted information will interfere with the prosecution of the crime. Based upon these representations, we conclude that the county may withhold some of the information under section 552.108(a)(1). See *Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). We conclude that the county may withhold the name and address of the witness in this criminal case under section 552.108. We do not believe, however, that the exception applies to the remaining information on these documents. We believe such information only

indirectly “deals with the detection, investigation, or prosecution of crime” and more directly deals with the expenditure and receipt of public funds. Therefore, the county may not withhold this information under section 552.108 of the Government Code.

Now we address whether the remainder of the information on the documents is excepted from disclosure under either section 552.103 or section 552.111. Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state is or may be a party. The county has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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 (1990) at 4. The county must meet both prongs of this test for information to be excepted under section 552.103(a).

Here, the requested information is for payments made to witnesses and reimbursements to the county for those payments. However, the county has not established the relatedness of this requested information to the subject matter of any particular litigation. We conclude that this information relates more to the expenditure and receipt of public funds rather than the subject matter of any litigation handled by the county. Therefore, the county may not withhold this information under section 552.103 of the Government Code.

You also contend that the information includes the work product of an attorney and may, therefore, be withheld under section 552.111 of the Government Code. If a governmental body wishes to withhold attorney work product under section 552.111, it must first show that the work product was created for trial or in anticipation of litigation under the test articulated in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993). See Open Records Decision No. 647 (1996) at 5. The work product exception, however, does not protect facts acquired by an attorney unless such facts reveal the mental processes, conclusions, and legal theories of the attorney. *Id.* We believe that the payments made to witnesses and reimbursements to the county for those payments is purely factual information and does not reveal the mental processes, conclusions, and legal theories of the attorney. The county, therefore, may not withhold the information in the records at issue that reflects payments made to witnesses and reimbursements to the county for those payments.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.¹ This ruling is limited to the particular records at issue

¹In reaching our conclusion here, we assume that 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.

under the facts presented to us in this request and should 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,

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

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 34709

Enclosures: Submitted documents

cc: Ms. Teresa Ruiz
610 Brazos Street, 4th Floor
Austin, Texas 78701
(w/o enclosures)