



November 22, 2000

Mr. John L. Schomburger
Assistant Criminal District Attorney
Collin County
210 S. McDonald, Suite 324
McKinney, Texas 75069

OR2000-4510

Dear Mr. Schomburger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141574.

The Collin County District Attorney (the "DA") received a request for information related to a criminal prosecution which has concluded. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(3) excepts from required public disclosure, information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime, if it is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or it reflects the mental impressions or legal reasoning of an attorney representing the state. In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court ruled, that where a district attorney's entire litigation file is sought, the work product privilege extends to the entire file because that material reflects the attorney's mental impressions. The current request is for the entire file on the subject prosecution. We therefore conclude that you may withhold the prosecution file responsive to the instant request under section 552.108(a)(3)(B) in conjunction with the ruling in *Curry*. However section 552.108 does not except from public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. See generally *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); Open Records Decision No. 127 (1976) (summarizing types of information

considered to be basic information, including detailed description of offense). We note that the submitted materials include a copy of the current request for information and the envelop in which that request was sent to you. These items are not, in our opinion, excepted by section 552.108 as they are in no way related to the prosecution of the subject case. Also, the submitted materials include documents which appear to have been filed with a court. If any documents have been filed with the court, they must be released. *See* Gov't Code 552.022(a)(17). Therefore, except for basic information, and the copy of the current request for information and its envelop, and any documents which have been filed with the court, you may withhold the subject information from disclosure.

As the above discussion resolves this request, we do not address your other arguments. This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns". The signature is fluid and cursive, with a large initial "M" and "J".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 141574

Encl: Submitted documents

cc: Mr. David S. Hughey
Hughey & Hughey
Chase Bank Tower
100 N. Central Expressway, Suite 815
Richardson, Texas 75080
(w/o enclosures)