



December 13, 2000

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney - Civil Section
Bexar County Justice Center
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2000-4691

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142157.

The Bexar County District Attorney's Office (the "district attorney") received a request for "copies of all documents and information maintained, assembled, or collected" by the district attorney with regard to a particular individual. You claim that the requested information is exempted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

As section 552.111 of the Government Code is the most inclusive exception you raise, we will address it first. You contend that the requested information is protected by the attorney work-product privilege, as encompassed by section 552.111. In Open Records Decision No. 647 (1996), this office held that a governmental body may withhold information under section 552.111 if the governmental body is able to show (1) that the information was created for trial or in anticipation of litigation under the test articulated in *National Tank Co. v. Brotherton*, 851 S.W.2d 193 (Tex. 1993) and (2) that the information in question consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 at 5 (1996). The attorney work-product doctrine is applicable to litigation files in criminal as well as civil litigation. See *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 (Tex. 1993), 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. In this instance, you inform us that the information in question was prepared for trial in connection with the pending prosecution of a charge of assault causing bodily injury. You

also assert that the information “consists of or tends to reveal the mental processes, conclusions, and legal theories of the attorneys involved in the felony criminal prosecution.” Additionally, you indicate that the requested information represents the district attorney’s entire prosecution file. Based on your representations and our review of the information in question, we conclude that it is excepted from disclosure as attorney work-product under section 552.111 of the Government Code.¹

We also note, however, that the request for the information in question was made on behalf of the State Board for Educator Certification (the “SBEC”). The requestor identifies herself as a staff investigator for the professional discipline unit of the SBEC. She states that the requested information pertains to an individual who is the subject of a licensure matter that is pending before the SBEC. She states that the purpose of the SBEC’s request is to obtain information that must be considered in the licensure proceedings.

Information may be transferred between governmental bodies that are subject to the Public Information Act and that have a related administrative aim without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). The release of information to a state agency with a common administrative aim is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information, or for those of section 552.352, which provides criminal penalties for the release of information that is considered to be confidential. *Id.* Therefore, if you determine that the request for the information in question was made in an official capacity by a governmental body with which the district attorney shares a related administrative aim, then you may transfer the requested information to this particular requestor without waiving the district attorney’s ability to raise her discretionary exceptions in the future or violating the Public Information Act’s prohibition of the release of confidential information.

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

¹As we are able to make this determination under section 552.111, we need not address sections 552.101, 552.103, or 552.108.

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).

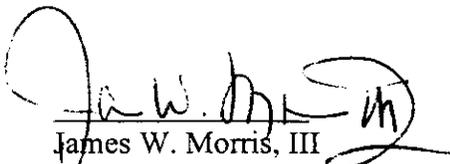
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 142157

Encl: Submitted documents

cc: Ms. Patricia Madison, Staff Investigator
Professional Discipline Unit
State Board for Educator Certification
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(w/o enclosures)