



June 20, 2001

Ms. Ann-Marie P. Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2001-2625

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148639.

The Travis County District Attorney's Office (the "district attorney") received a request for a certain case file, specifically "all files, records, and any other documents in the possession of the [district attorney] pertaining to [the requestor's client,] Martha Castelan Hernandez." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the sample of documents and the audio cassette tapes and videotape.<sup>2</sup> We have also reviewed the requestor's letter dated June 12, 2001.

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<sup>1</sup> You state that the records in Tabs E, F, and G, which contain records of two juvenile defendants and one other adult defendant, and Tab D, which contains information concerning Martha Hernandez's brother, are unresponsive to the request because they do not pertain to Martha Hernandez. You explain that a master file was maintained by the district attorney regarding the murder of Roberto Giral, Martha Hernandez's husband, and that the records contained in Tabs E, F, and G are separate files from Martha Hernandez and involve separate trials – the common factor being the murder of Roberto Giral. You further explain that Tab D pertains to a separate incident involving Javier Castelan Hernandez and allegations that he assaulted Roberto Giral with a deadly weapon. Consequently, we do not rule on any portion of Tabs D, E, F, and G.

<sup>2</sup> You have submitted to this office documents which you indicate constitute a representative sample of the district attorney's file. We assume that this "representative sample" of records 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.

First, you contend that the information submitted as Tab B is not subject to the Public Information Act (the "act") pursuant to section 552.003 as it is information of the grand jury. The act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information prepared or collected by the agent is within the grand jury's constructive possession. *Id.* Information not held or maintained in this manner is not exempt from the act's coverage and may be withheld only if one of the act's specific exceptions applies to the information. *Id.* It is unclear whether Tab B, for which you assert a section 552.108 claim, are records of the grand jury. Thus, we will address your section 552.108 claim as to this information.

Next, we note and you have acknowledged that records filed with the court are public records and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 837 S.W.2d 54, 57-58 (Tex. 1992). We further note that the records contain an autopsy report and a search warrant affidavit. Section 11 of article 49.25 of the Texas Code of Criminal Procedure provides that autopsy reports, including the full report and detailed findings of an autopsy, are public records. *See* Open Records Decision No. 529 at 4 (1989). Thus, the autopsy report must be released to the requestor. Likewise, an affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). Because the search warrant in this case has been executed, the district attorney must release the search warrant affidavit.

We will consider your section 552.108 claim for the remaining information. Section 552.108 of the Government Code, the "law enforcement" exception, provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(3) 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;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. You assert that because the requestor seeks the entire criminal case file held by the district attorney, the entire case file, including the audio cassette tapes and videotape, is excepted from disclosure under *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). In *Curry*, the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and that, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), "the decision as to what to include in [the file] necessarily reveals an attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks all the information in a particular file, we agree that you may withhold most of the requested information pursuant to section 552.108(a)(3) of the Government Code and *Curry*.

We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. 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 [14<sup>th</sup> Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the basic information. Although section 552.108 authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.<sup>3</sup>

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

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<sup>3</sup> As we resolve this matter under section 552.108(a)(3), 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 deemed confidential by statute, the release of which may constitute a criminal offense. See Gov't Code § 552.352.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DBF/seg

Ref: ID# 148639

Enc. Submitted documents

c: Mr. John Kuhn  
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(w/o enclosures)