



April 19, 2002

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2002-2005

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161552.

The Tarrant County District Attorney (the "district attorney") received a request for information relating to investigations that involved (1) a named individual, as accused or complainant, during a particular period of time or (2) any events that occurred at three specified street addresses during another time period. You state that the district attorney has released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Initially, we address the request for "[a]ll records or reports" that pertain to the named individual. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information regarding a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

This request, in part, is for unspecified law enforcement information that pertains to the named individual. In that respect, this request for information implicates the individual's right to privacy. Therefore, insofar as the district attorney maintains any information that depicts the named individual as a suspect, arrestee, or defendant, apart from information that pertains to events at the street addresses, the district attorney must withhold all such information under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

To the extent that the requestor seeks information that relates to the street addresses, we address the district attorney's claim under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intragency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 647 (1996), this office held that a governmental body may withhold an attorney's work product under section 552.111 if the governmental body demonstrates (1) that the information was created for trial or in anticipation of litigation under the test articulated in *National Tank Company v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after litigation is filed, and (2) that the information consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." See Open Records Decision No. 647 at 5. The work product doctrine is applicable to litigation files in criminal as well as in 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)).

The first element of the work product test has two parts. The governmental body must demonstrate (1) that a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and (2) that the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. See Open Records Decision No. 647 at 4. A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." See *National Tank Co.*, 851 S.W.2d at 204. The second element of the work product test requires a showing that the information at issue tends to reveal the attorney's mental processes, conclusions, and legal theories. See Open Records Decision No. 647 at 4. The governmental body must demonstrate that the information consists of or tends to reveal the thought processes of an attorney in the civil litigation process. *Id.* The attorney work product privilege generally does not extend to facts obtained by the attorney. *Id.*

You state that the information relating to the street addresses was prepared by or under the supervision of a prosecuting attorney. You assert that this information was created in anticipation of trial or appeal and that it reflects the prosecutor's thought processes. Based on your representations, we conclude that the district attorney may withhold this information under section 552.111.

In summary, any information that depicts the named individual as a suspect, arrestee, or defendant, other than the information that relates to events at the street addresses, must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*. The district attorney may withhold the information that relates to events at the street addresses under section 552.111.

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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 161552

Enc: Submitted documents

c: Mr. Salahuddin Hakim
2110 West Sublett Road
Arlington, Texas 76017
(w/o enclosures)