OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 10, 2003

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County District Attorney's Office
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2003-0879

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176305.

The Dallas County Criminal District Attorney's Office (the "district attorney") received a request for a statement of a particular individual relating to a specified investigation. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code states in pertinent part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:
>
> . . .
>
> (4) 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; or

> (B) reflects the mental impressions or legal reasoning of an attorney representing the state.
>
> . . . .
>
> (c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

The information at issue consists of a videotape depicting an attorney representing the Texas Department of Insurance (the "department") interviewing an individual about a viatical settlement fraud scheme that was being investigated by the district attorney and the department. You inform us that the attorney was the state's expert in the prosecution of a named individual and that the tape is contained in the district attorney's file relating to the prosecution of the named individual. You also inform us that this information was prepared by an attorney representing the state in the course of preparing for criminal litigation and assert that the questions the attorney asked in the course of conducting the interview reflect that attorney's mental impressions and legal reasoning. Based on your representations and arguments and our review of the submitted information, we conclude that you have established the applicability of section 552.108(a)(4) to the submitted information, and it may be withheld on that basis. As our ruling on this issue is dispositive, we need not address your arguments regarding section 552.101.

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

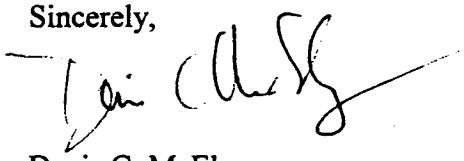
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 176305

Enc. Submitted documents

c: Mr. Dale R. Barron
8222 Douglas Avenue, Suite 509
Dallas, Texas 75225
(w/o enclosures)