



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 31, 2003

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, 5th Floor
San Antonio, Texas 78205-3030

OR2003-2168

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178745.

The Bexar County District Attorney's Office (the "District Attorney") received a request for "all files, records, and any other documents" pertaining to a named individual. You assert the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, we note the submitted information contains a search warrant affidavit. An executed search warrant affidavit is made public by statute. *See* Code Crim. Proc. art. 18.01(b). Therefore, because the search warrant has been executed, the District Attorney must release the search warrant affidavit in its entirety under article 18.01(b) of the Code of Criminal Procedure.

Next, we note section 552.022 of the Government Code governs the remainder of the submitted information. Section 552.022 provides, in relevant part, as follows:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, section 552.022(a)(1) makes the requested information expressly public as it pertains to a completed investigation. Therefore, the District Attorney may withhold this information only to the extent it is made confidential under other law or is otherwise protected by section 552.108 of the Government Code. Accordingly, though the District Attorney claims sections 552.103 and 552.111, these exceptions are discretionary and thus, do not constitute other law for the purposes of section 552.022. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103), 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the District Attorney may not withhold the submitted information under sections 552.103 and 552.111 of the Government Code.

You assert section 552.108, in connection with your assertion of attorney work product, and argue the information is excepted from disclosure in its entirety pursuant to the holding in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994) (discovery request for district attorney's entire litigation file may be denied because decision of what to include in file necessarily reveals prosecutor's mental impressions or legal reasoning). Section 552.108 provides, in pertinent part, as follows:

- (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:

....

- (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.

After reviewing the submitted information, we find the request for information encompasses the prosecutor's entire case file. *Curry* provides the release of such information would reveal the prosecutor's mental impressions or legal reasoning. Accordingly, except as otherwise noted in this ruling, the District Attorney may withhold the prosecution file pursuant to subsection 552.108(a)(4)(B) of the Government Code.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). Thus, the District Attorney must release the basic information under section 552.108(c) of the Government Code.

In summary, the District Attorney must release the search warrant affidavit, which we have marked, under article 18.01(b) of the Code of Criminal Procedure. With the exception of basic information, the District Attorney may withhold the remainder of the file pursuant to section 552.108 of the Government Code.

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 Dep't of Pub. 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 178745

Enc: Submitted documents

c: Mr. Jeffrey S. Mitchel
J. Mitchel Private Investigations
1150 Cypress Creek Road
Kerrville, Texas 78028
(w/o enclosures)