



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

September 23, 2003

Ms. Grace E. Shin  
Assistant District Attorney  
Dallas County District Attorney's Office  
133 North Industrial Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2003-6676

Dear Ms. Shin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188118.

The Dallas County District Attorney's Office (the "district attorney") received a request for the district attorney's file in a specified cause. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

We first note that the submitted information includes an arrest warrant. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk *shall make a copy of the warrant and the affidavit available for public inspection* in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (to be codified as amendment to Crim. Proc. Code art. 15.26) (emphasis added). In this instance, the submitted information includes an executed arrest warrant. Article 15.26 of the Code of Criminal Procedure makes this document public. As a general rule, the exceptions found in chapter 552 of the Government Code do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the arrest warrant that we have marked must be released to the requestor.

We next note that the rest of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

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, or, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the rest of the submitted information consists of a completed investigation made of, for, or by a governmental body. Therefore, the district attorney must release this information under section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.111 of the Government Code, which the district attorney raises, is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to Gov't Code § 552.111). As such, section 552.111 is not other law that makes information confidential for the purposes of section 552.022. Thus, the district attorney may not withhold any of the submitted information under section 552.111.

The district attorney also claims that the rest of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in 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) represents the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

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

Gov't Code § 552.108(a)(4), (b)(3). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), 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. You inform us that your office interprets the present request for information as a request for the district attorney's entire criminal litigation file in the cause that the requestor specifies. You assert that the rest of the submitted information reflects the mental impressions, legal reasoning, and conclusions of the attorney representing the state. You also contend that the information gathered, developed, and organized by prosecutors, their investigators, or agents in preparation for trial constitutes attorney work product. Based on your representations and our review of the rest of the submitted information, we agree that most of the information at issue is excepted from disclosure under section 552.108(a)(4) and (b)(3) 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. 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). The district attorney must release basic front-page information under section 552.108(c), including a detailed description of the offense, even if that

information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-187; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney may withhold the rest of the submitted information, with the exception of the arrest warrant, under section 552.108(a)(4) and (b)(3).

In summary, the district attorney must release the submitted arrest warrant in accordance with article 15.26 of the Code of Criminal Procedure. The district attorney may withhold the remaining information under section 552.108(a)(4) and (b)(3) of the Government Code, except for the basic information that must be released under section 552.108(c). As we are able to make these determinations, we need not address your arguments under sections 552.101 and 552.130.

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).

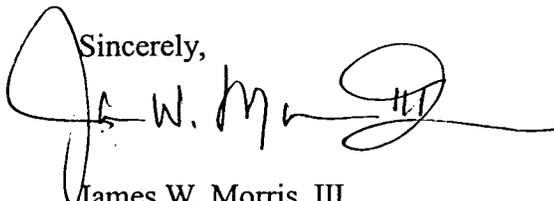
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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# 188118

Enc: Submitted documents

c: Ms. Stephanie Carwile  
Habern, O'Neil & Buckley, L.L.P.  
P.O. Box 627  
Riverside, Texas 77367  
(w/o enclosures)