



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2003

Ms. Grace E. Shin
Assistant District Attorney
County of Dallas
133 North Industrial Blvd, LB-19
Dallas, Texas 75207-4399

OR2003-8132

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# 190938.

The Dallas County District Attorney's Office (the "district attorney") received a request for "any and all correspondence and any documentation in [a specified] complaint file not limited to those used to formulate the DA's opinion that the complaints do not warrant investigation." You also provide documentation showing that the requestor clarified her request, stating she wants "EVERYTHING in the litigation guide relative to [a specified complaint] . . . or . . . EVERY piece of paper in the file maintained by Any office in Dallas County used in regards to the [specified complaint]." (Emphasis in original). 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 reviewed the submitted information.

We first note that the submitted information as a whole consists of a completed investigation made of, for, or by the district attorney. Section 552.022(a)(1) of the Government Code provides that such information is not excepted from required disclosure under the Public Information Act (the "Act"), except as provided by section 552.108, or unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(1). You assert the attorney work product privilege aspect of section 552.111. See Open Records Decision No. 647 (1996) (for pending litigation, attorney work product privilege may be asserted under either section 552.103 or 552.111). Section 552.111 is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. See Open Records Decision Nos. 522 at 4 (1989) (discretionary exceptions in general), 473

(1987) (governmental body may waive statutory predecessor to section 552.111). Therefore, we do not consider your claim under section 552.111. However, because information subject to section 552.022(a)(1) may be withheld as provided by section 552.108, we will address your section 552.108 assertion for the submitted information.

Section 552.108 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 [and]

(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) 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.

You cite to subsections 552.108(a)(4) and (b)(3) in connection with your assertion of attorney work product. When a request essentially seeks the entire prosecution file, the

information is excepted from disclosure in its entirety. *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). In this instance, we agree that the request encompasses the prosecutor's entire case file. *Curry* thus provides that the release of the information would reveal the prosecutor's mental impressions or legal reasoning. Accordingly, except as otherwise noted herein, you may withhold the submitted information pursuant to subsections 552.108(a)(4)(B) and (b)(3)(B) of the Government Code.

We note that 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). In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. See Open Records Decision No. 127 at 4 (1976). The district attorney must release to the requestor this information in relation to the case that is the subject of the request, whether or not the information is found on the front page of an offense report.

In summary, with the exception of basic information regarding the case at issue, which must be released, the submitted information may be withheld under section 552.108. As our ruling is dispositive, we need not address your remaining arguments.

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 190938

Enc. Submitted documents

c: Ms. Sandra Crenshaw
c/o Mr. Julio Perez
2821 Fort Worth Avenue
Dallas, Texas 75211
(w/o enclosures)