



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2004

Mr. Eugene D. Taylor
County Attorney
Williamson County
405 Martin Luther King Box 3
Georgetown, Texas 78626

OR2004-0424

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194457.

The Williamson County Attorney's Office (the "county attorney") received a request for "[a] detailed record of any and all 'tips' received by the Williamson County Attorney-led Public Integrity Task Force tip line," concerning a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This section encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Evidence. *City of Garland v. Dallas Morning News*, 22

¹Although you raise rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure as potential exceptions to disclosure, the submitted information is not subject to section 552.022 of the Government Code. Therefore, rule 503 and rule 192.5 do not apply in this instance. See Open Records Decision No. 676 at 4 (2002).

²You state that you have notified the person to whom the submitted information relates of this request for information and of his right to submit arguments to this office as to why the information should not be released. See Gov't Code §§ 552.304, .305; Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances). As of the date of this decision, we have received no correspondence from this individual.

S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as

- (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

A governmental body seeking to withhold information under this exception bears the burden of demonstrating that the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. Tex. R. Civ. P. 192.5; ORD 677 at 6-8. In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that

- a) 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 b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

Nat'l Tank Co. v. Brotherton, 851 S.W.2d 193, 207 (Tex. 1993). 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." *Id.* at 204; ORD 677 at 7.

You explain that removal of a state or county official from elected office "requires a formal court proceeding, and may only be based upon specific grounds as set forth by Chapter 87 of the Local Government Code." In a proceeding to remove any county official other than a prosecutor, the county attorney represents the state. *See* Loc. Gov't Code § 87.018. Further, you state that

[b]efore an action to remove a county official can commence, a County Attorney must be sure that the facts forming the basis of the removal action are substantiated as genuine. To that end, the Williamson County Attorney organized the Williamson County Public Integrity Task Force (the 'Public Integrity Task Force') composed of investigators from the County Attorney's Office and one deputy constable from each of the four constable's offices in Williamson County. . . . The Public Integrity Task Force is responsible for

operation of the Public Integrity Task Force Tip Line (the 'Public Integrity Task Force Tip Line') and for the solicitation, collection and investigation of information related to allegations of misconduct and/or criminal activity by the Williamson County Sheriff.

Therefore, you contend that "litigation was in fact reasonably anticipated at the time the [county attorney] received the present request, as the predicates to filing suit - the creation of the Public Integrity Task Force and the Tip Line and commencement of the investigation into allegations of misconduct and/or criminal activity - were all well underway and thereby serve as reliable indicia of objective steps toward filing suit." You also state that the submitted information "was compiled by attorneys, investigators and a legal assistant through the Public Integrity Tip Line, and that the contents and organization of the file are supervised by the Williamson County Attorney who will litigate the forthcoming civil removal suit." Upon review of your arguments and the submitted information, we find that you have demonstrated that the submitted information was prepared in anticipation of litigation. Therefore, you may withhold the submitted information under section 552.111 of the Government Code as attorney work product. As we are able to make this determination, 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 194457

Enc: Submitted documents

c: Mr. Jordan Smith
Austin Chronicle
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(w/o enclosures)