

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2005

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2005-04784

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224254.

The Tarrant County District Attorney (the "county") received a request for a "listing of the names of all those who have been referred to [the county's DIRECT Drug Court Program (the "program")] since 2002" and "the case numbers of those referred to the [program]." The request was later amended to include the case files of the same individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered arguments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we address the list submitted in response to the first request. Section 552.101, excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 290dd-2(a) of title 42 of the United State Code reads as follows:

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse

prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. § 290dd-2(a). You inform us that the program is partially funded through federal funds. We, therefore, agree that the records are subject to section 290dd-2(a). We note that the release provisions outlined in sections 290dd-2(b) and (e) are not applicable in this instance. The names of individuals who were referred to the program are confidential under section 290dd-2(a) and must be withheld under section 552.101. 42 U.S.C. § 290dd-2(a); *see also* 42 C.F.R. § 2.2. The remainder of the list is not confidential and, therefore, may not be withheld under this exception.

We next turn to the case files submitted in response to the second request. We note that the case files contain court records signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). As noted, the names of persons referred to the program are confidential and must be withheld from the submitted court filed documents in accordance with section 552.101 in conjunction with section 290dd-2(a) of title 42 of the United State Code. However, sections 552.108 and 552.111 of the Government Code are discretionary exceptions that protect a governmental body's interests and are therefore not "other law" that makes court records confidential for purposes of section 552.022. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); Open Records Decision No. 470 at 7 (1987) (statutory predecessor to section 552.111 may be waived); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, the submitted court documents may not be withheld pursuant to section 552.108 or section 552.111. We note however that the county's claim under section 552.111 is based on the attorney work product privilege that is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). The Texas Rules of Civil Procedure, however, only apply to "actions of a civil nature." Tex. R. Civ. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 does not apply to the criminal matters at issue here. The remainder of the submitted court documents must be released to the requestor.

With regard to the remainder of the submitted case files that are not court-filed documents, however, we will address your claim under the attorney work product privilege as incorporated in section 552.108 of the Government Code, which provides 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) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body that claims an exception to public disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *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). You point out that the requestor seeks access to the county's entire criminal case files. 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. In this case, the requestor seeks "access to the case files" of individuals referred to the program. We agree that the request is for the prosecutor's entire case files. *Curry* provides that the release of such information would necessarily reveal the prosecutor's mental impressions or legal reasoning. Therefore, having considered your arguments and reviewed the submitted information, we determine that section 552.108(a)(4) is applicable in this instance.

We note that section 552.108 does not except from public 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 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). Basic information includes the identity of the arrestee. As noted, however, the names of persons referred to the program are protected by section 290dd-2(a) of title 42 of the United State Code and must be withheld pursuant to section 552.101 of the Government Code. Thus, with the exception of names, basic information must be released. The remaining information may be withheld. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

In summary, the county must withhold the identities of individuals referred to the program from the submitted list under section 552.101 of the Government Code in conjunction with section 290dd-2(a) of title 42 of the United State Code. Other than the identities of individuals referred to the program that must be withheld under section 552.101 in conjunction with section 290dd-2(a), the submitted documents that have been filed with a court must be released to the requestor. The county must release basic information, other than the identities of individuals referred to the program, from the submitted case files but may withhold the remainder of these files under section 552.108(a)(4) of the Government Code as interpreted in *Curry v. Walker*.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/sdk

Ref: ID# 224254

Enc. Submitted documents

c: Ms. Tanya Eiserer
Staff Writer
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)

Ms. Dionne Carney Rainey
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
(w/o enclosures)

NOV 28 2006

At 1:56p. M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. GN502177

TIM CURRY, CRIMINAL DISTRICT
ATTORNEY OF TARRANT COUNTY,
TEXAS.

Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,

Defendant.

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IN THE DISTRICT COURT FOR

THE 53RD JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Filed in The District Court
of Travis County, Texas

DEC 01 2006
At 1:49p. M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Tim Curry, Criminal District Attorney of Tarrant County, Texas, and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestor, Tanya Eiserer, was sent reasonable notice of this setting and of the parties' agreement that the District Attorney must withhold some of the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, identifying information pertaining to defendants who were referred to the D.I.R.E.C.T. Drug Court Program for the requested time period, specifically, a

defendant's alias, address, or social security number, case numbers, any law enforcement agency identification number, and bond numbers, is confidential under 42 U.S.C.A. § 290dd-2 and, therefore, is excepted from disclosure by Tex. Gov't Code Ann. § 552.101.

2. The District Attorney shall withhold from the requestor the information at issue.

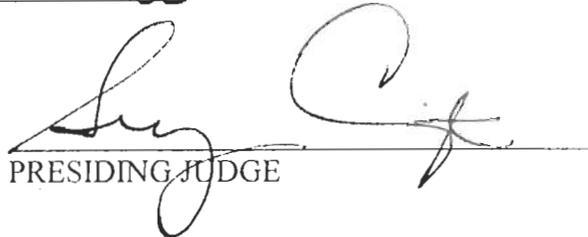
3. The District Attorney no longer contests the disclosure of other basic information pertaining to these defendants; if he has not already done so, the District Attorney will disclose this information to the requestor promptly upon receipt of a final judgment signed by the court.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

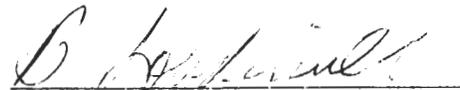
SIGNED this the 28th day of December, 2006.


PRESIDING JUDGE

APPROVED:



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