



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 29, 2005

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

OR2005-10686

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# 237066.

The Tarrant County District Attorney's Office (the "district attorney") received a request for all records associated with a specified cause number. You state that you are releasing some of the requested information. You claim, however, that the submitted 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.

Initially, we note that grand juries are not governmental bodies that are subject to the Act, so records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *Id.* at 3. Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *Id.* You inform us that some of the submitted information was obtained pursuant to a grand jury subpoena and that this information is therefore held by the district attorney as an agent of the grand jury.

We agree that information obtained pursuant to a grand jury subpoena is in the custody of the district attorney as agent of the grand jury and is not subject to disclosure under the Act.<sup>1</sup>

We note that the remaining information at issue is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

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). The remaining information at issue relates to a completed investigation made by or for the district attorney. Therefore, as prescribed by section 552.022, the district attorney must release this information unless it is excepted under section 552.108 or confidential under "other law." Section 552.111 of the Government Code is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 does not qualify as "other law" that makes information confidential for the purposes of section 552.022. Thus, the remaining information at issue may not be withheld under section 552.111. However, since section 552.022(a)(1) provides that information made public under that section may be excepted from disclosure under section 552.108 of the Government Code, we will address the district attorney's arguments under that exception.

Section 552.108 of the Government Code 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:

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<sup>1</sup>As we are able to make this determination, we need not address your remaining claim against disclosure for this information.

(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 contend that the requestor seeks access to the district attorney's entire criminal case file in Cause No.0205119. In *Curry v. Walker*, the Texas Supreme Court held that a district attorney's decision as to what to include in a case file necessarily reveals the attorney's thought processes concerning the prosecution of the case. *See Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). Accordingly, the court found that the district attorney's entire case file was protected by the attorney work product privilege. *Id.* at 380-81.

Here, we note your statement that you will release some information from the case file to the requestor. Thus, as you do not seek to withhold the entire case file, we find that *Curry* is not applicable in this instance. *See* Open Records Decision No. 647 (1996) (specific document is not automatically protected by work product privilege because it is part of attorney's litigation file). However, you state that the remaining information at issue was created by the district attorney in the course of preparing for criminal litigation and reflects the district attorney's thought processes. Based on your representations and our review of the information at issue, we determine that section 552.108(a)(4) is applicable to the remaining information at issue. Accordingly, the district attorney may be withhold this information pursuant to section 552.108(a)(4).

In summary, records that the district attorney maintains as the agent of the grand jury are in the constructive possession of the grand jury and are not subject to public disclosure under the Act. The remaining information at issue may be withheld under section 552.108(a)(4) 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, 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); *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 Office of the Attorney General 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. 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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 237066

Enc. Submitted documents

c: Mr. James M. Arnold  
6039 Thomas Road #E  
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(w/o enclosures)