



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2007

Ms. Claire Yancey
County of Denton
Assistant District Attorney
P.O. Box 2850
Denton, Texas 76202

OR2007-07283

Dear Ms. Yancey:

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# 281181.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for "all information and/or documents on [the shooting of three individuals] in all files maintained in [the district attorney's] office for all fully completed and nonappealable charges prosecuted in Denton County" against a named individual. You claim that the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains court-filed documents. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Although, you assert that these documents are excepted under section 552.108 of the Government Code; this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the

¹Although you also raise sections 552.101, 552.103, 552.107, and 552.111 of the Government Code as exceptions to disclosure of the requested information, you have provided no arguments regarding the applicability of those exceptions; we therefore assume that you no longer urge these exceptions. *See* Gov't Code §§ 552.301(b), (e); .302.

governmental body. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, this section does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the district attorney may not withhold the court-filed documents under section 552.108 of the Government Code. As you raise no other exception to disclosure of this information, the court-filed documents must be released to the requestor.

You assert that the remaining information is excepted from public disclosure under section 552.108 of the Government Code, which provides in part:

(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(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 state that the submitted information was prepared by a prosecutor representing the state. You explain that "the documents within the prosecution file are strategically organized and contain handwritten notations which depict the independent thoughts and judgments made by" the district attorney in preparation for litigation. Upon review, we agree that the remaining information reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude that the remaining information is subject to section 552.108(b)(3).

In summary, the court-filed documents must be released to the requestor pursuant to 552.022(a). The district attorney may withhold the remaining information under

section 552.108(b)(3) of the Government Code. As we are able to resolve this under section 552.108, we do not address your other arguments for exception of this information.

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 281181

Enc. Submitted documents

c: Mr. Chris Raesz, P.C.
306 North Carroll Boulevard
Denton, Texas 76201
(w/o enclosures)