

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2008

Mr. Daniel Bradford
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR2008-06184

Dear Mr. Bradford:

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# 309633.

The Travis County Attorney's Office (the "county attorney") received a request for nine categories of information regarding a specified case. You claim that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.¹

Section 552.108 of the Government Code provides in relevant part as follows:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.

Gov't Code § 552.108(a)(4). 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 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." *Id* at 380. (quoting *Nat'l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). We note that if a governmental body seeks to withhold the entire litigation file under *Curry*, the governmental body may not release parts of the file, which would contradict the *Curry* argument. Although the request for information encompasses the county attorney's entire litigation file, you assert that only some of the requested information may be withheld pursuant to *Curry*. Therefore, we find that you do not seek to withhold the entire prosecution file. As a result, the county attorney may not withhold any of the information at issue under section 552.108(a)(4) based upon *Curry*.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.² Gov't Code § 552.130. We note, however, that if the requestor in this instance is the attorney for the individual to whom the Texas motor vehicle record information at issue pertains, he has a special right of access to such

²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). If the requestor is not the attorney for the individual at issue, then the county attorney must withhold the Texas motor vehicle record information we have marked under section 552.130. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 309633

Enc. Submitted documents

c: Mr. Grant Clifton
Lorenz & Lorenz, L.L.P.
2224 Walsh Tarlton Lane, Suite 225
Austin, Texas 78746
(w/o enclosures)

AUG 04 2008 EM

At 8:50 A.M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GV-08-001197

DAVID A. ESCAMILLA,
TRAVIS COUNTY ATTORNEY,
Plaintiff,

§ IN THE DISTRICT COURT OF

§

§

§

V.

§ TRAVIS COUNTY, TEXAS

§

GREG ABBOTT, ATTORNEY GENERAL OF
TEXAS,

§

§

Defendant.

§ 353RD JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

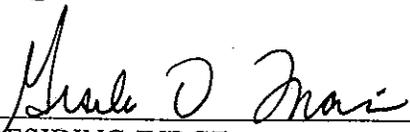
On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff David A. Escamilla, Travis County Attorney, and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and 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 ch. 552 (West 2004 & Supp. 2007). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325©, the requestor, Grant Clifton, was sent reasonable notice of this setting and of the parties' agreement that the County Attorney may withhold the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his 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, specifically, the prosecution file requested by Grant Clifton, is excepted from disclosure by Tex. Gov't Code § 552.108(a)(4).

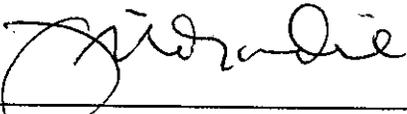
2. The County Attorney may withhold the information at issue from the requestor.
3. All costs of court are taxed against the party incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 4 day of August, 2008.



PRESIDING JUDGE

APPROVED:



TIMOTHY R. LABADIE
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ATTORNEY FOR PLAINTIFF



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ATTORNEY FOR DEFENDANT