



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 29, 2013

Ms. Shannon C. Francis  
Assistant County Attorney  
Williamson County  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

OR2013-07008

Dear Ms. Francis:

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# 485733.

The Williamson County Attorney's Office (the "county attorney's office") received a request for information relating to jurors who have served on prior criminal cases. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically excludes social security numbers, driver's license numbers, home addresses, home telephone numbers and family member information from the scope of the request. Accordingly, these types of information are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, nor is the county attorney's office required to release non-responsive information to this requestor.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989).

You inform us the submitted information is a compilation of internal records prepared by assistant county attorneys in the county attorney's office. You explain that, at the conclusion of jury trials, prosecutors may send surveys that are created by the county attorney's office to jurors, and these surveys are "designed to collect information helpful to the individual prosecutors and in the development of a juror ranking system. Jurors are given a performance ranking based on the information in the completed surveys, along with the prosecutor's subjective opinions and conclusions regarding the jurors." You state this information is used by the assistant county attorneys during voir dire examinations in criminal trials. You further state that the submitted information reveals prosecutors' trial strategies and would compromise these prosecutors' effectiveness when trying future cases. Based on these representations and our review, we agree section 552.108(b)(1) is applicable to most of the submitted information. Therefore, the county attorney's office may generally withhold the submitted information under section 552.108(b)(1) of the Government Code. *See* Open Records Decision No. 369 (1983) (disclosure of prosecutors' subjective comments about former jurors would tend to indicate the state's possible strategy in future prosecutions and in doing so would compromise state's effectiveness in prosecuting criminal matters).

However, we note the submitted information contains a letter sent to a juror. Because this letter was provided to the juror it addresses, we find release of this letter will not interfere with law enforcement or prosecution. We, therefore, conclude the letter that we have marked may not be withheld under section 552.108(b)(1).

You assert the letter we have marked is protected from disclosure because it is attorney work product. 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." Gov't Code § 552.111. This exception encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

- (1) [M]aterial 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.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. *Id.*; 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 assert the letter we have marked consists of attorney work product that was prepared by prosecutors of the county attorney's office in anticipation of litigation. In this instance, however, the letter at issue consists of communications with a juror. Thus, because a non-privileged party has had access to this information, the work product privilege under section 552.111 has been waived. Accordingly, the county attorney's office may not withhold the letter we have marked under the work product privilege of section 552.111 of the Government Code.

We note however, that Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Thus, section 552.101 encompasses information other statutes make confidential, such as article 35.29 of the Code of Criminal Procedure. Information collected about jurors in the jury selection process is governed by article 35.29, which provides:

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought.

Crim. Proc. art. 35.29. Article 35.29 makes confidential certain personal information pertaining only to those individuals who actually served on the petit jury in a criminal trial. In addition to the confidential information listed in article 35.29, "other personal information" that is confidential pursuant to article 35.29 includes the juror's present

employer, business telephone number, and spouse's employer. Juror names, however, are not made confidential by article 35.29, and are not "other personal information" that is confidential pursuant to article 35.29.

The letter we have marked contains the home address of an individual who served on a jury. Thus, we conclude this address, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure.

In summary, the county attorney's office must release the letter we have marked, with the exception of the marked address, which must be withheld under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure. The county attorney's office may withhold the remaining information under section 552.108 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

Ref: ID# 485733

Enc. Submitted documents

c: Requestor  
(w/o enclosures)