



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2013

Ms. Donna L. Clarke  
Assistant Criminal District Attorney  
Lubbock County  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR2013-17693

Dear Ms. Clarke:

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# 501833.

The Lubbock County District Attorney's Office (the "district attorney's office") received a request for fourteen categories of information pertaining to a specified automobile accident and a named defendant. You claim the requested 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 representative sample of information.<sup>1</sup>

Initially, we note the submitted information includes a CR-3 accident report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). However, section 550.065(c)(4) provides for release of accident reports to a person who provides two

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<sup>1</sup>We 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.

of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.

In this instance, the requestor has provided the district attorney's office with the required information pursuant to section 550.065(c)(4). Although you seek to withhold this information under sections 552.108 and 552.111 of the Government Code, we note a statutory right of access prevails over the general exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Accordingly, the district attorney's office must release the submitted CR-3 accident report pursuant to section 550.065(c)(4) of the Transportation Code.

You seek to withhold the remaining requested information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. These subsections provide in relevant part as follows:

(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.

(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) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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) held, "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 (internal quotations omitted). Accordingly, the court concluded in such an instance, the district attorney's entire litigation file is privileged attorney work product.

You contend the instant request for information is a request for the entire prosecution file for a criminal case. We disagree that the requestor has sought the entire prosecution file. Rather, the requestor has specifically itemized the precise documents he seeks that are held by the district attorney's office. Such a request does not constitute a request for the "entire" file. Thus, we conclude that the present request is not a request for the entire prosecution file. As a result, the district attorney's office may not withhold the remaining requested information under *Curry*, and you must demonstrate how the information at issue is excepted under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

You assert the information at issue was prepared by attorneys representing the State of Texas in order to prepare for criminal litigation and release of this information would reveal the mental impressions and legal reasoning of the prosecutor. Upon review, we find the district attorney's office has failed to demonstrate how any of the remaining information consists of information prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. Thus, the remaining information is not protected by subsection 552.108(a)(4) or 552.108(b)(3), and the district attorney's office may not withhold it on that basis.

You also claim the remaining information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "[a]n 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. Rule 192.5 defines work product as

(1) material 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 governmental body seeking to withhold information under this exception bears the burden of demonstrating that 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.

The work product doctrine under section 552.111 of the Government Code is applicable to litigation files in criminal and civil litigation. *Curry*, 873 S.W.2d at 381; *see U.S. v. Nobles*, 422 U.S. 225, 236 (1975). Upon review, we find you have failed to establish the information at issue consists of material prepared, mental impressions developed, or a communication made in anticipation of litigation or for trial by or for the district attorney's office or representatives of the district attorney's office. Therefore, the district attorney's office may not withhold any of the information at issue as attorney work product under section 552.111 of the Government Code.

Some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;  
[or]
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.].

Gov't Code § 552.130. However, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). The submitted photographs contain visible license plate numbers and registration information. The remaining information also contains motor vehicle record information, which we have marked. Therefore, to the extent the visible license plate numbers and registration information in the submitted photographs and the motor vehicle record and personal identification information we have marked in the remaining information pertain to a living person or a vehicle owned by a living person, the district attorney's office must withhold this information under section 552.130 of the Government Code. However, the district attorney's office may not withhold this information under section 552.130 if it pertains solely to a deceased individual.

To summarize: The district attorney's office must release the submitted CR-3 accident report pursuant to section 550.065(c)(4) of the Transportation Code. To the extent the visible license plate numbers and registration information in the submitted photographs and the motor vehicle record and personal identification information we have marked in the remaining information pertain to a living person or a vehicle owned by a living person, the district attorney's office must withhold this information under section 552.130 of the Government Code. The remaining requested information must be released.<sup>2</sup>

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.texasattorneygeneral.gov/open/>

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<sup>2</sup>We note the information to be released includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

[orl\\_ruling\\_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 501833

Enc. Submitted documents

c: Requestor  
(w/o enclosures)