



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2014

Ms. Meredith L. Kennedy
Assistant District Attorney
Wichita County District Attorney's Office
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2014-08655

Dear Ms. Kennedy:

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# 523333 (ORR No. 421).

The Wichita County Criminal District Attorney's Office (the "district attorney's office") received a request for all records containing policies or procedures regarding discovery practice in felony, misdemeanor, or juvenile criminal cases. You state the district attorney's office will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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." See Gov't Code § 552.111. This section 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:

¹Although you cite to section 552.107 of the Government Code in your brief to this office, we understand you to raise section 552.111 of the Government Code based on the substance of your arguments.

(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 argue the submitted information consists of attorney work product. You further argue the documents at issue were prepared by a prosecutor for the district attorney's office. Upon review, we note the documents in question consist of a blank checklist and form pleadings. These documents contain no information relating to any specific case or other enforcement matter. We find you have not demonstrated these documents constitute material prepared, mental impressions developed, or a communication made in anticipation of litigation or for trial. *See* TEX. R. CIV. P. 192.5. We therefore conclude the district attorney's office may not withhold the submitted information on the basis of the attorney work product privilege under section 552.111 of the Government Code. As no other exceptions to disclosure have been raised, the district attorney's office must release the submitted information.

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/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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive, flowing style.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 523333

Enc. Submitted documents

c: Requestor
(w/o enclosures)