



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 18, 1996

Ms. Tamara A. Armstrong  
Assistant County Attorney  
County of Travis  
County Courthouse  
P.O. Box 1748  
Austin, Texas 78767

OR96-2141

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35226.

The Travis County District Attorney received an open records request for "any and all records in the possession, custody and control of your office and any other documents which are subject to your control concerning the above-referenced incident (Cause No. 92-5094) . . . ." You contend that the requested records may be withheld under sections 552.101, 552.108 and 552.111 of the Government Code.

We first address your contention that section 552.111 of the Government Code excepts the information from required public disclosure. This office recently issued Open Records Decision No. 647 (1996), holding that a governmental body may withhold information under section 552.111 of the Government Code if the governmental body can show (1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5. The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (citing *United States v. Nobles*, 422 U.S. 225, 236 (1975)). In *Curry*, the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), 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." Because the requestor in this instance seeks all information regarding a particular case, we agree that you may withhold the requested information pursuant to section 552.111 of the Government Code as attorney work product. However, you may choose to release all or part of the information that is not otherwise

confidential by law. Gov't Code § 552.007.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 35226

Enclosures: Submitted documents

cc: Janet K. Soderman  
Manager  
DMI Document Retrieval, Inc.  
114 W. Seventh Street, Suite 710  
Austin, Texas 78701  
(w/o enclosures)

---

<sup>1</sup>As we resolve this matter under section 552.111, we need not address the other exceptions you have raised. We note, however, that some of the information submitted to this office for review, medical records, is confidential by law, the release of which may constitute a criminal offense. See Gov't Code § 552.352.