Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1997

Ms. Tina Morales
Central Records Supervisor
Travis County District Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR97-1125

Dear Ms. Morales:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106676.

The Travis County District Attorney's Office received an open records request for the contents contained in the Travis County District Attorney's prosecution files regarding a particular defendant. You contend that the requested information is protected from required public disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. You also are withholding grand jury records which you contend are records of the judiciary and, therefore, are not subject to the Open Records Act. We have considered the exceptions you have raised and have reviewed the information at issue.

First, we note and you have acknowledged that records filed with the court are public records. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

Next, we address your contention that all the information submitted to this office for review is protected as attorney work product. In Open Records Decision No. 647 (1996), this office held 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), 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." *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks all the information in a particular file, we agree that you may withhold all of 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.[1]

We are resolving this matter with this 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 may 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,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 106676

Enclosures: Submitted documents

cc: Mr. Oscar L. Cantu, Jr.
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(w/o enclosures)

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[1]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 is deemed confidential by statute, the release of which may constitute a criminal offense. *See* Gov't Code § 552.352.