



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 22, 1997

Ms. Joni M. Vollman
Assistant General Counsel
Harris County District Attorney
District Attorney's Building
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR97-2355

Dear Ms. Vollman:

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# 109525.

The Harris County District Attorney (the "district attorney") received a request for "your office's files, including all reports and witness reports, notes, memos, records, offense reports and witness reports pertaining to the prosecution of Arthur Brown, Jr. in *State of Texas v. Arthur Brown, Jr.*, Cause No. 636,535." You state that some of the documents responsive to the request have been made available to the requestor, but assert that the remaining information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, 552.108, and 552.117 of the Government Code. We have considered your arguments and have reviewed the information submitted.¹

Section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: . . . (3) 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.

See Act of June 1, 1997, H.B. 951, §1, 75th Leg., R.S. (to be codified at Gov't Code § 552.108).

¹For purposes of this decision, we assume that the "representative samples" 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.

You argue that “[t]his request also seeks disclosure of the thought processes and attorney work product of the district attorney’s office with respect to the prosecution of the criminal case mentioned,” and as such, includes materials within the scope of section 552.108. Based on this assertion, we assume you are seeking to protect the requested information pursuant to section 552.108(a)(3). Upon review of the information submitted, we conclude that it was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude you may withhold the requested information under 552.108(a)(3) with the following exceptions.

We note that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. In this regard, we note that front page offense report information generally may not be withheld from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991) (concluding that statutory predecessor to section 552.103 did not except basic information in offense report).

We also note that included in the information submitted are documents that have been filed with a court. Consequently, these documents have become part of the public record and may not be withheld under sections 552.103 or 552.108. *Cf. Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Although section 552.108 authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

As we resolve your request under section 552.108(a)(3), we need not address your arguments under section 552.101 in conjunction with the specific confidentiality provisions cited, nor under sections 552.103, 552.107 and 552.117.

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

Ref.: ID# 109525

Enclosures: Submitted documents

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(w/o enclosures)

10

