



March 24, 2000

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P O Box 12548
Austin, Texas 78711-2548

OR2000-1150

Dear Ms Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134034.

The Office of the Attorney General (the "OAG") received a request for "all documents, correspondence and filings regarding American Children's Safety Source" ("ACSS"). You assert that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. You have submitted for our review a representative sample of documents responsive to the request, marked by you as exhibits 2 through 14.¹ We have considered the exceptions you assert, your arguments, and reviewed the submitted information.

You explain the OAG is currently investigating ACSS and anticipates an action against ACSS. Among other arguments, you assert the attorney work product privilege for all of the information in exhibits 2 through 14. In Open Records Decision No. 647 (1996), this office concluded that a governmental body may withhold attorney work product under section 552.103 or section 552.111 of the Government Code² if the governmental body can show (1) that the information was created for trial or in anticipation of litigation under the test

¹In reaching our conclusion here, 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.

²Where the litigation has concluded, attorney work product may be withheld only under section 552.111. *See* Open Records Decision No. 647 (1996).

articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), and (2) that the information consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 at 5 (1996).

As to item (1) above, under the *National Tank* test, it must be shown that a reasonable person would have concluded that, first, there was a substantial chance that litigation would ensue, and second, that the party resisting disclosure believed in good faith that there was a substantial chance that litigation would ensue and prepared or collected the information in question for purposes of such litigation. *National Tank Co.*, 851 S.W. 2d at 207; Open Records Decision No. 647 at 4 (1996). After careful review of the submitted arguments and information, we conclude that the OAG has demonstrated in this instance that the information at issue was created, assembled, or collected for trial or in anticipation of litigation under both prongs of the *National Tank* test.

As to item (2) above, we note that in *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and that, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), "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. Likewise, in applying the attorney work product privilege in the context of the Public Information Act, and pursuant to the rationale set forth in *National Union*, this office has stated that where a requestor seeks an attorney's entire file regarding particular litigation, such a request may be denied in its entirety under the attorney work product aspect of sections 552.103 and 552.111. See Open Records Decision No. 647 at 5 (1996). Because the requestor in this instance seeks "all documents, correspondence, and filings," we find that the requestor is essentially asking the OAG to release its entire investigative file concerning ACSS. Under the circumstances, we therefore conclude that the OAG may withhold all of the information in exhibits "2" through "14." Because we make a determination under section 552.103, we need not address your additional arguments at this time.

This letter ruling is limited to the particular records 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 records or any other circumstances.

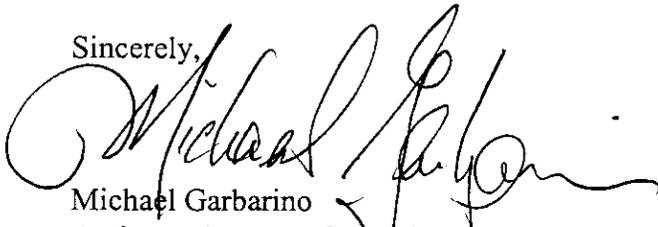
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ch

Ref: ID# 134034

Encl. Submitted documents

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(w/o enclosures)