



January 31, 2001

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2001-0363

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143769.

The Bexar County District Attorney's Office (the "office") received a request for the entire criminal prosecution file of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes an arrest warrant and related supporting affidavit. If the warrant has been filed with a court, then it is public and must be released. See Gov't Code § 552.022(a)(17) (providing for required public disclosure of information that also is a matter of public court record); see also *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

Next, we address your contention that all the submitted information 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 at 5 (1996). 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.

Here, the requestor seeks the district attorney’s entire file pertaining to the named individual’s case. Because the requestor in this instance seeks all the information in a particular file, we agree that, except for the court documents discussed above, your office may withhold the submitted information pursuant to section 552.111 of the Government Code as attorney work product.¹

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).

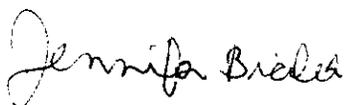
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

¹Because we are able to make a determination under section 522.111 of the Government Code, we need not address your other claimed exceptions.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 143769

Encl: Submitted documents

cc: Mr. Charles L. Smith
Jenkins & Gilchrist
1400 Frost Bank Tower
100 West Houston Street
San Antonio, Texas 78205
(w/o enclosures)