



May 9, 2002

Mr. K. Scott Oliver
Assistant Criminal District Attorney
Bexar County - Civil Section
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2002-2457

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162803.

The Bexar County District Attorney's Office (the "district attorney") received a request "to view and copy files maintained by your office" regarding a specified case. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information consists of a completed investigation made of, for, or by the district attorney. Section 552.022(a)(1) of the Government Code thus provides that this information is not excepted from required disclosure under the Act, except as provided by section 552.108, or unless the information is expressly confidential under other law. You assert the attorney work product privilege aspect of section 552.111. *See* Open Records Decision No. 647 (1996) (for pending litigation, the attorney work product privilege may be asserted under either section 552.103 or 552.111). Section 552.111 is a discretionary exception under the Act and does not constitute "other law" for the purposes of section 552.022.¹ You also argue that the submitted information is confidential under section 51.14 of the Family Code, which is "other law" for the purposes of section 552.022. Furthermore, because information subject to section 552.022(a)(1) may be withheld as provided by section 552.108, we will address your section 552.108 assertion for the submitted file as well.

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general); 473 (1987) (governmental body may waive section 552.111).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality statutes such as section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. You state that the "case in question involves an individual who was a juvenile offender at the time of prosecution." However, section 51.14(d) of the Family Code explicitly excepts "files and records relating to a charge for which a child is transferred under section 54.02 of this code to a criminal court for prosecution" from the protections the statute affords. The information you have submitted to this office reveals that the juvenile in question was transferred to a district court for prosecution as an adult. Therefore, the requested file is not confidential under former section 51.14(d) of the Family Code and cannot be withheld from disclosure in its entirety pursuant to section 552.101 of the Government Code.

Section 552.108 states in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

...

(4) 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 [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

...

(3) the internal record or notation:

(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.

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You cite to section 552.108 in connection with your assertion of attorney work product. When a request essentially seeks the entire prosecution file, the information is excepted from disclosure in its entirety pursuant to the holding in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994) (discovery request for district attorney's entire litigation file may be denied because the decision of what to include in the file necessarily reveals the prosecutor's mental impressions or legal reasoning). In this instance, we agree that the request essentially encompasses a request for the district attorney's entire case file. *Curry* thus provides that the release of the information would reveal the district attorney's mental impressions or legal reasoning. Accordingly, except as otherwise noted herein, you may withhold the submitted file pursuant to subsections 552.108(a)(4)(B) and (b)(3)(B) of the Government Code.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. See Open Records Decision No. 127 at 4 (1976). The district attorney must release to the requestor this information, whether or not the information is found on the front page of an offense report.

In conclusion, except for basic information about an arrested person, an arrest, or a crime, you may withhold the requested file pursuant to section 552.108 of the Government Code.

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).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 162803

Enc: Submitted documents

c: Mr. Joe Hingston
Louisiana Crisis Assistance Center
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(w/o enclosures)