



June 18, 2002

Mr. James T. Russell  
Administrative Assistant  
27<sup>th</sup> Judicial District  
P.O. Box 540  
Belton, Texas 76513-0540

OR2002-3312

Dear Mr. Russell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164494.

The District Attorney for the 27<sup>th</sup> Judicial District of Texas, Bell County (the "district attorney") received a request for a copy of the state's file pertaining to cause number 50,989. You state that the district attorney is willing to release copies of public court documents which are also contained in the public court record, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We note that the information at issue constitutes completed investigations made of, for, or by the district attorney. Thus, section 552.022(a)(1) of the Government Code provides that this information is not excepted from required disclosure under the Public Information Act, except as provided by section 552.108, or unless the information is expressly confidential under other law. *See* Gov't Code § 552.022(a). You contend that the requested information is excepted under section 552.108 in that disclosure of the requested information would

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<sup>1</sup>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.

reveal the prosecutor's thought processes and legal reasoning. 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]

....

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

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, the requestor has asked for "a copy of the State's file." *Curry* thus provides that the release of the information would reveal the prosecutor's mental impressions or legal reasoning. Accordingly, except as otherwise noted herein, you may withhold the submitted information pursuant to subsections 552.108(a)(4)(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). Basic information includes the identity and description of the complainant. In this regard, however, we note that section 552.101 excepts from disclosure "information considered to

be confidential by law, either constitutional, statutory, or by judicial decision.” Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the documents at issue that contain basic information relate to an investigation of child abuse and/or neglect, the documents are within the scope of section 261.201 of the Family Code. *See* Fam. Code §§ 261.001(1), (4) (defining abuse and neglect); 101.003(a) (“child” is generally defined as “a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes”). You have not indicated that the district attorney has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, basic information is confidential in this case pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

To summarize, the district attorney may withhold the submitted information pursuant to subsections 552.108(a)(4)(B), with the exception of basic information, which must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code.<sup>2</sup> As we are able to make this determination, we need not address your other arguments against disclosure.

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

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<sup>2</sup>We note that section 261.201 of the Family Code is “other law” for purposes of section 552.022(a)(1).

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 164494

Enc. Submitted documents

c: Ms. Cynthia Henley  
Attorney at Law  
712 Main Street, 31<sup>st</sup> Floor  
Houston, Texas 77002  
(w/o enclosures)