



August 27, 2002

Mr. Gordon Bowman  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2002-4788

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167674.

The Travis County District Attorney's Office (the "district attorney") received a request for the ten specified criminal case files relating to homicide charges against ten named individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.114, 552.119, 552.130, 552.132, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you assert that some of the requested records consist of testimony and evidence that were prepared by or for the prosecuting attorney for presentation to the grand jury. You argue that these documents are records of the judiciary and, therefore, not subject to the Public Information Act (the "Act"). Information obtained pursuant to a grand jury subpoena issued in connection with an investigation is within the grand jury's constructive possession and is not subject to the Act. Open Records Decision No. 513 (1988); *see also* Gov't Code § 552.003. The fact alone that information collected or prepared by the district attorney is submitted to the grand jury, however, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney. Open Records Decision No. 513 (1988). Based on your representations and our

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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.

review, we determine that the requested district attorney records are not records of the judiciary and are subject to the Act.

Next, you inform us that four of the requested cases are closed. Thus, we note that the information pertaining to the closed cases consists of 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 claim that the information at issue is excepted from disclosure as attorney work product pursuant to section 552.108(a)(4) of the Government Code. Section 552.108 of the Government Code 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.

You assert that "all of the [district attorney] records constitute attorney work product" and, as such, are excepted from disclosure under section 552.108 of the Government Code. In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's entire file is necessarily a request for work product because "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 (quoting *National Union Fire Insurance Company v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993, orig. proceeding)). In this instance, you assert, and the request reflects, that "the requestor seeks entire criminal case files." Accordingly, we determine that the release of this information would reveal the district attorney's mental impressions or legal reasoning. Therefore, we find that the information in the requested completed investigations is excepted

from disclosure under section 552.108(a)(4) 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 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). Thus, the district attorney must release basic front page offense and arrest information regarding the underlying homicides pertaining to the completed investigations at issue. The district attorney may withhold the remainder of the completed investigations under section 552.108(a)(4) of the Government Code.

You inform us that six of the requested cases are pending in the appeals process. As with the closed case files, you argue that the case files pertaining to the pending cases are excepted from disclosure as attorney work product under section 552.108(a)(4) of the Government Code. We note the requestor also seeks the entire criminal case files of these cases. Thus, we determine that release of this information would reveal the district attorney's mental impressions or legal reasoning. Therefore, we find that the information in the requested pending case files is excepted from disclosure pursuant to *Curry v. Walker* and section 552.108(a)(4) of the Government Code. We note, however, that information that is contained in a public court record is public unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Therefore, as prescribed by section 552.022, court documents contained in the pending case files must be released to the requestor. Furthermore, the district attorney must release basic front page offense and arrest information regarding the underlying homicides pertaining to the pending case files. The district attorney may withhold the remainder of the pending case files under section 552.108(a)(4) of the Government Code.

In summary, with the exception of basic information, the district attorney may withhold the completed investigations at issue under section 552.108(a)(4) of the Government Code. With the exception of basic information and court documents, the district attorney may withhold the pending case files at issue under section 552.108(a)(4) of the Government Code.

Because we address the information at issue in its entirety under section 552.108, we do not reach your other claimed exceptions to 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

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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 167674

Enc: Submitted documents

c: Ms. Andrea Keilen  
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(w/o enclosures)