OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 18, 2002

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB 19
Dallas, Texas 75207-4399

OR2002-5270

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168795.

The Dallas County District Attorney's Office (the "district attorney") received a request for "a complete copy of [the district attorney's] public records pertaining to the arrest and confinement" of a named individual. You state that it is unclear whether the requestor seeks access to the prosecution file or the police investigation file, and that attempts to resolve the issue have been unsuccessful. Accordingly, you state that you interpret the request as a request for access to the district attorney's criminal litigation file. 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 completed investigations made of, for, or by the district attorney. Section 552.022(a)(1) of the Government Code provides that such 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. Because you claim section 552.108 and other exceptions that would make portions of the submitted information confidential by law, we will address your arguments.

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.

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)).

With regard to the requested information, you state that you"interpret[] [the] request as a request for the District Attorney's litigation files" and assert that the "request for copies of 'all inner [sic] office memos,' 'investigation notes, memos, and recorded comments' . . . necessarily constitutes a request for attorney work product information." In this instance, we agree that the request essentially asks for the district attorney's entire case files. *Curry* provides that the release of this information would reveal the district attorney's mental impressions or legal reasoning. Accordingly, you may withhold the requested information pursuant to section 552.108(a)(4)(B) of the Government Code except as noted below.

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). This information must be released whether or not the information is found on the front page of an offense report.

In summary, the district attorney may withhold the requested information under section 552.108, with the exception of basic information. As our ruling on this issue is dispositive, we need not address your remaining arguments.

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).

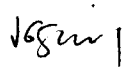
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 168795

Enc: Submitted documents

c: Mr. Alan Bean
507 North Donley
Tulia, Texas 79088
(w/o enclosures)