



October 3, 2002

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

OR2002-5572

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# 170137.

The District Attorney for the 27th Judicial District of Texas, Bell County (the "district attorney") received a request for "[the district attorney's] files concerning the investigations" into the conduct of a named individual. You claim that the requested information is excepted from disclosure under sections 552.022, 552.101, 552.103, 552.108, 552.111, 552.130, 552.132, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Please note that section 552.022 is not an exception to the disclosure of information under the Public Information Act. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code, unless they are expressly confidential under other law.

²We 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.

We note that the information at issue constitutes a completed investigation made of, for, or by the district attorney. Section 552.022(a) of the Government Code provides in pertinent part as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Because the requested information pertains to a completed investigation, the district attorney may withhold this information only to the extent it is made confidential under other law or is otherwise protected by section 552.108 of the Government Code. You contend that the requested information is excepted under section 552.103 and as attorney work product under section 552.111. Sections 552.103 and 552.111 of the Government Code are discretionary exceptions under the Public Information Act and do not constitute "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. Recently, the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). The Texas Rules of Civil Procedure, however, only apply to "actions of a civil nature." Tex. R. Civ. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 does not apply to the criminal matter at issue here. However, we will address whether the requested information may be withheld under section 552.108.

You contend that the requested information is excepted under section 552.108 in that disclosure of the requested information would 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 decision of what to include in file necessarily reveals prosecutor's mental impressions or legal reasoning). In this instance, we agree that the request essentially asks for the district attorney's entire case file. *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) 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,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 170137

Enc. Submitted documents

c: Mr. Stuart Smith
Naman, Howell, Smith & Lee, P.C.
P.O. Box 1470
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(w/o enclosures)