



November 20, 2002

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

OR2002-6645

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# 172518.

The Bexar County District Attorney's Office (the "district attorney") received a request for all records relating to a particular capital murder case prosecuted by the district attorney. 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 initially that the submitted information comes within the ambit of section 552.022 of the Government Code, which makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 states in relevant part that:

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

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108...." Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation. Therefore, as prescribed by section 552.022, this information must be released to the requestor unless it is excepted from release under section 552.108 or is confidential under other law. You argue that the submitted information is excepted from release under

section 552.108. You also argue that the information is excepted from disclosure under section 552.111. Section 552.111 is a discretionary exception, and thus does not constitute "other law" for purposes of section 552.022.¹ See Open Records Decision No. 473 (1987) (governmental body may waive section 552.111). However, the attorney work product privilege of section 552.111 is also found in Rule 192.5 of the Texas Rules of Civil Procedure. 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). Thus, we will determine whether the submitted information, which is subject to section 552.022, is confidential under Rule 192.5.

An attorney's core work product is confidential under Rule 192.5. Core work product is defined as the work product of an attorney or an attorney's representative developed in anticipation of litigation or for trial that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories. See Tex. R. Civ. P. 192.5(a), (b)(1).

You state that the responsive information constitutes the district attorney's entire file regarding the specified capital murder case. You rely on *Curry v. Walker* for the proposition that a request for a district attorney's "entire file" is "too broad." 873 S.W.2d 379, 380 (Tex. 1994). The Texas Supreme Court has stated that the organization of an attorney's litigation file, as well as the decision as to what to include in it, necessarily reveals the attorney's thought processes concerning the case. See *National Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993). Thus, after review of your arguments and the information at issue, we agree that, in this case, the attorney's decision to include certain documents in the litigation file reveals the attorney's thought processes concerning the litigation. Therefore, because the requestor seeks all the information in this particular file, we find that the submitted information may be withheld in its entirety as attorney work product under Rule 192.5 of the Texas Rules of Civil Procedure. As Rule 192.5 is dispositive, we need not consider 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

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 Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general).

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).

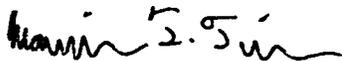
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 172518

Enc: Submitted documents

c: Mr. Joe Hingston
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(w/o enclosures)