



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 12, 2002

Mr. John Feldt  
Assistant District Attorney  
Denton County - Civil Division  
P.O. Box 2850  
Denton, Texas 76202

OR2002-7092

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173529.

The Denton County Community Supervision and Corrections Office and the Denton County Criminal District Attorney's Office (collectively, the "county") received requests for all probation files and all prosecution files, respectively, that pertain to a named individual, including all records pertaining to cause number F-92-1045-CD. You claim that the requested probation files consist of records of the judiciary that are not subject to the Public Information Act (the "Act"). You claim that the requested prosecution files are excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, and 552.130 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we consider the public availability of the submitted probation records. The Act generally requires the public disclosure of information maintained by a "governmental body." While the Act's definition of a "governmental body" is broad, it specifically excludes the judiciary. *See Gov't Code* § 552.003(1)(B). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether the entity in

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<sup>1</sup> We note that you assert the attorney work product privilege under section 552.107. The proper exception for a claim of attorney work product is section 552.111. Open Records Decision Nos. 677 (2002), 647 (1996).

question is performing a judicial function or acting in a purely administrative role. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ)).

In Open Records Decision No. 646 (1996), this office determined that a community supervision and corrections department holds probationers' records on behalf of the judiciary as an agent of the judiciary. Open Records Decision Nos. 646 at 5 (1996); *see also* Open Records Decision No. 236 (1980) (records of an adult probation office, indicating whether probationers are complying with terms of probation, are records of the judiciary and not subject to the Act). You state that the submitted probation records are maintained by the county at the direction of the district court as part of the court's judicial function. Based on your representation and our review, we agree that the probation records at issue are held by the county on behalf of the judiciary and are not subject to disclosure under the Act.<sup>2</sup>

Next, you indicate that the requested prosecution records pertain to a case that has concluded. We note that the prosecution file pertaining to a closed case consists of a completed investigation 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 552.111 of the Government Code. Section 552.111, however, is a discretionary exception to disclosure that protects a governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See* 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). Thus, you may not withhold the prosecution records at issue as attorney work product under section 552.111 of the Government Code.

We note that the 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. The information at issue relates to criminal prosecutions. Accordingly, the attorney work product privilege found in Rule 192.5 does not apply to the information at issue here.

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<sup>2</sup>The release of the requested information is within the discretion of the court, acting through its agent, the Denton County Community Supervision and Corrections Office. *See* Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)).

You also claim, however, that the requested prosecution records are protected by the attorney work product privilege pursuant to sections 552.108(a)(4) and 552.108(b)(3) 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]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

...

(3) the internal record or notation:

(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.

(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)). In this case, you state, and the request reflects, that the

requestor seeks “the entire Denton County Criminal District Attorney’s prosecution file” relating to the case at issue. 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 prosecution records is generally excepted from disclosure under sections 552.108(a)(4) and 552.108(b)(3) 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 county must release basic front page offense and arrest information regarding the underlying offense pertaining to the case at issue.

In summary, the requested probation records are held by the county on behalf of the judiciary and are not subject to disclosure under the Act. With the with the exception of basic information, the county may withhold the prosecution records under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. Because we are able to make this determination, 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# 173529

Enc: Submitted documents

c: Mr. David P. O'Neil  
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