



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 19, 2002

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2002-7316

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173898.

The Tarrant County Sheriff's Office (the "sheriff") received a request for copies of records maintained by the Tarrant County jail (the "jail") pertaining to a former inmate of the jail. You state that the sheriff has produced all public and other confidential information to the requestor pursuant to an authorization and release received by the sheriff that was signed by the individual who is the subject of this request. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that Exhibit C is excepted from disclosure pursuant to section 552.101 in conjunction with constitutional law. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by constitutional law. In Open Records Decision Nos. 428 (1985) and 430 (1985), this office concluded that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected under constitutional law. *See* Open Records Decision Nos. 430 at 6 (1985) (list of inmate's visitors protected by constitutional law), 428 (1985) (list of inmate's correspondents protected by constitutional law); *see also* Open Records Decision No. 185 (1978) (finding outside correspondents to have First Amendment right to correspond with inmates that would be threatened if their names were released). Exhibit C, as well as portions of Exhibit D which we have marked, consist of an inmate's visitor information. Accordingly, we conclude that the sheriff must withhold Exhibit C, as well as the portions

of Exhibit D which we have marked, pursuant to section 552.101 of the Government Code in conjunction with constitutional law.

You also claim that the remaining portions of Exhibit D are excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) protects information encompassed by the attorney-client privilege. We note that in instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. The privilege does not apply to all client information held by a governmental body's attorney. *See id.* at 5. This office recently refined this position and determined that when a governmental body demonstrates that a communication is protected by the attorney-client privilege as defined by rule 503 of the Texas Rules of Evidence, the entire communication is excepted from disclosure under section 552.107. *See* Open Records Decision No. 676 at 5 (2002). A governmental body that raises section 552.107 bears the burden of explaining how the particular information requested is protected by the attorney-client privilege. *See id.* at 6; *see also Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). Based on our review of your arguments and the remaining portions of exhibit D, we agree that this information reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinion provided in furtherance of the rendition of legal services to the client. Accordingly, we conclude that the sheriff may withhold the remaining information in Exhibit D pursuant to section 552.107(1) of the Government Code.

You claim that Exhibit E is excepted from disclosure as attorney work product pursuant to section 552.111 of the Government Code. We note that a governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. *See* Gov't Code § 552.111; *see also* Open Records Decision Nos. 677 at 4 (2002) ("appropriate law for a claim of attorney work product privilege is Gov't Code § 552.111"), 647 (1996). The first prong of the work product test, which requires a governmental body to show that the documents at issue were created for trial or in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery or release believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See id.* at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. After carefully reviewing your arguments and Exhibit E, we conclude that you have failed to demonstrate how any portion of this information constitutes attorney work product.

Accordingly, we conclude that the sheriff may not withhold any portion of Exhibit E as attorney work product under section 552.111 of the Government Code.

In summary, the sheriff must withhold Exhibit C, as well as portions of Exhibit D which we have marked, pursuant to section 552.101 of the Government Code in conjunction with constitutional law. The sheriff may withhold the remaining information in Exhibit D pursuant to section 552.107(1) of the Government Code. The sheriff must release Exhibit E to the requestor in its entirety.

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).

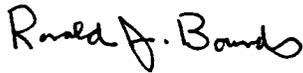
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 173898

Enc. Marked documents

cc: Ms. Serenity Norman
Capital Punishment & Educational Services
3530 Forest Lane, Suite 117
Dallas, Texas 75234
(w/o enclosures)