OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 26, 2003

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-1209

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177016.

The Travis County District Attorney's Office (the "District Attorney") received a request for "the complete file . . . concerning the case of Texas v. John W. Elliott (83, 216)." You assert the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have reviewed the representative sample of information you submitted and we have considered the exceptions you claim.[1]

Initially, we note section 552.022 of the Government Code governs the submitted information. Section 552.022 provides, in relevant part, as follows:

> (a) 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] We 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.

> (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). In this instance, section 552.022(a)(1) makes the requested information expressly public as it pertains to a completed investigation. Therefore, 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 cite to subsections 552.108(a)(4) and 552.108(b)(3), and, in connection with your assertion of attorney work product, you argue that because the requestor seeks the District Attorney's "complete" criminal case 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). Section 552.108 reads 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 the requirements of Section 552.021 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.
>
> (c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

We agree that the records request encompasses the prosecutor's entire case file. *Curry* provides that the release of the information would reveal the prosecutor's mental impressions or legal reasoning. Accordingly, except as otherwise noted in this ruling, the District Attorney may withhold the prosecution file pursuant to subsection 552.108(a)(4)(B) of the Government Code.

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). Thus, the District Attorney must release the basic information.

In summary, with the exception of basic information, the District Attorney may withhold the remainder of the file pursuant to section 552.108 of the Government Code.

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).

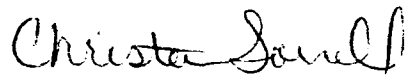
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 177016

Enc: Submitted documents

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