



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 31, 2003

Mr. Scott A. Durfee
General Counsel
Harris County District Attorney
1201 Franklin Street, Suite 600
Houston, Texas 77002

OR2003-2177

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178608.

The Harris County District Attorney (the "district attorney") received a request for all files relating to Kid Care or We Care About Kids, and any correspondence relating to Kid Care in any computer in the district attorney's office. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have also received arguments from the Consumer Protection division of this office that the information is excepted under section 552.103. We have considered all of the submitted arguments and have reviewed the submitted information.

We first note that "information that is also contained in a court record" is subject to required public disclosure under section 552.022(a)(17) of the Government Code. Section 552.022(a) of the Government Code provides that this information is not excepted from required disclosure under the Public Information Act unless the information is expressly confidential under other law. Sections 552.103 and 552.108 are discretionary exceptions which do not constitute other law that make information subject to section 552.022(a)(17) confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third party rights and may be waived). *See also* Open Records Decision Nos. 586 (1991) (governmental body may waive predecessor to section 552.108). Therefore, the submitted court documents must be released.

We now address your claim under section 552.108 in relation to the remaining information. 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]

(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.

You cite to subsections 552.108(a)(4) and (b)(3) in connection with your assertion of attorney work product. When a request essentially seeks the entire prosecution file, the information is excepted from disclosure in its entirety. *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994) (discovery request for district attorney's entire litigation file may be denied because the decision of what to include in the file necessarily reveals the prosecutor's mental impressions or legal reasoning). In this instance, we agree that the request for all files relating to Kid Care or We Care About Kids essentially encompasses the prosecutor's entire

case file. *Curry* thus provides that the release of the information would reveal the prosecutor's mental impressions or legal reasoning. Accordingly, you may withhold the remaining information in the case file pursuant to subsections 552.108(a)(4)(B) and (b)(3)(B) of the Government Code. As section 552.108 is dispositive, we need not address the submitted arguments under section 552.103 for this information.

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,

A handwritten signature in black ink that reads "Kristen Bates". The signature is written in a cursive style with a large, stylized initial 'K'.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 178608

Enc. Submitted documents

c: Mr. Wayne Dolcefino
KTRK TV
3310 Bissonnet
Houston, Texas 77005
(w/o enclosures)