OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 17, 2003

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

OR2003-4155

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# 182915.

The Denton County District Attorney's Office (the "district attorney") received a request for the district attorney's prosecution file regarding a particular alleged offense. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.130 of the Government Code.

The information at issue consists of a completed investigation made of, for, or by the district attorney. In this regard, we note that the release of the prosecution file is specifically made subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent 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) a completed report, audit, evaluation, or *investigation* made of, for, or by a governmental body, except as provided by Section 552.108. [Emphasis added.]

The submitted prosecution file constitutes a "completed investigation" made public under section 552.022(a)(1). Therefore, the district attorney may withhold the submitted information only if it is made confidential under other law or is excepted from disclosure under section 552.108 of the Government Code. Because you contend that the information at issue is excepted from required public disclosure pursuant to, *inter alia*, section 552.108, we will consider your claims.

Section 552.108 of the Government Code provides 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.

Gov't Code § 552.108(a)(4), (b)(3), (c). 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 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 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 records request 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, the district attorney may withhold most of the requested information pursuant to subsections 552.108(a)(4)(B) and (b)(3)(B) of the Government Code.[1]

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 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). In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. *See* Open Records Decision No. 127 at 4 (1976). The district attorney must release to the requestor this information, regardless of whether the information is found on the front page of an offense report. The remaining submitted information may be withheld 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

---

[1]Because we resolve your request under section 552.108, we need not address the applicability of the other exceptions you raised.

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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/sdk

Ref: ID# 182915

Enc: Submitted documents

c: Ms. Rachel M. Rutti
c/o Kim Modrall
2000 Widgon Way
Flower Mound, Texas 75028
(w/o enclosures)