



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2006

Ms. Deborah F. Harrison  
Assistant District Attorney  
Collin County  
Special Crimes Division - Civil Section  
210 South McDonald, Suite 324  
McKinney, Texas 75069

OR2006-04331

Dear Ms. Harrison:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 247880.

The Collin County District Attorney's Office (the "district attorney") received a request for information related to an accident involving the requestor's client on March 19, 2005. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that the submitted information relates to grand jury proceedings. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* However, you have not demonstrated, nor does it appear to this office, that the submitted documents are in fact in

the constructive possession of the grand jury. Thus, the submitted documents are subject to disclosure under the Act and the ruling below.

We note that the submitted documents include an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the district attorney with two of the three specified items of information. Therefore, the district attorney must release the accident report, which we have marked, under section 550.065(c)(4) of the Transportation Code.

We next address your "work product" argument. You contend that pursuant to *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994), the district attorney's litigation file, taken as a whole, constitutes the work product of the district attorney, and as such is excepted from required public disclosure in its entirety. We disagree that the requestor has sought the entire prosecution file -- rather, she has specifically itemized the precise documents held by the district attorney that she seeks. Such a request does not constitute a request for the "entire" file. A specifically requested document is not automatically considered to constitute work product simply because it is a part of an attorney's litigation file. *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993). Thus, an individual may request specific documents or categories of documents contained in the litigation file without necessarily implicating the work product privilege.

You next assert that the remaining information is excepted from public disclosure under section 552.108 of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the rest of the submitted information relates to a pending criminal case. Based on your representation, we find that section 552.108(a)(1) is applicable in this instance. See *Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

However, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The district attorney must release basic information even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

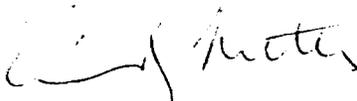
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<sup>1</sup>As our ruling is dispositive, we do not address your remaining claims, except to note that, generally, basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1997).

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 Office of the Attorney General 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. 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

CN/krl

Ref: ID# 247880

Enc. Submitted documents

c: Ms. Veronica Rodriguez  
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