



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2006

Mr. Bryce Perry
Assistant Criminal District Attorney
Wichita County District Attorney's Office
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2006-10213

Dear Mr. Perry:

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# 258316.

The Wichita County District Attorney (the "district attorney") received a request for a copy of the file in a specified criminal case. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that some of the submitted information appears to have been obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983); *but see* Open Records Decision No. 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at

the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513. Thus, to the extent that the district attorney has possession of the submitted information as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of any such information. To the extent that the district attorney does not have possession of the submitted information as an agent of the grand jury, the information is subject to the Act and must be released unless it falls within an exception to public disclosure.

We next note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made of, for, or by the district attorney. Therefore, the information must be released under section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. Because you seek to withhold the submitted information under section 552.108, we will address that exception. We also will address your claim under section 552.147, which is a confidentiality provision for purposes of section 552.022.

Section 552.108 of the Government Code provides in 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) represents the mental impressions or legal reasoning of an attorney representing the state.

(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) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You point out that the instant request is for a "copy of [the] DA file." You explain that the submitted documents consist of information that was created or assembled by the district attorney's office in anticipation of or in the course of preparing for criminal litigation. You contend that because this request encompasses the district attorney's entire litigation file in the specified criminal case, the district attorney may withhold the requested information in its entirety under section 552.108(a)(4) and (b)(3). Having considered your arguments and reviewed the information at issue, we agree that section 552.108(a)(4) and (b)(3) are applicable in this instance.

We note 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). The district attorney must release basic front-page information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See* 531 S.W.2d at 186-188; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney may withhold the remaining information under section 552.108(a)(4) and (b)(3).

We also note that under section 552.147 of the Government Code, "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ The

¹We further note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

district attorney must withhold the social security number of the arrested person under section 552.147.

In summary: (1) to the extent that the district attorney has possession of the submitted information as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to the Act; (2) except for the basic information that must be released under section 552.108(c), the district attorney may withhold the rest of the submitted information under section 552.108(a)(4) and (b)(3) of the Government Code; and (3) the arrested person's social security number must be withheld under section 552.147 of the Government Code.²

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).

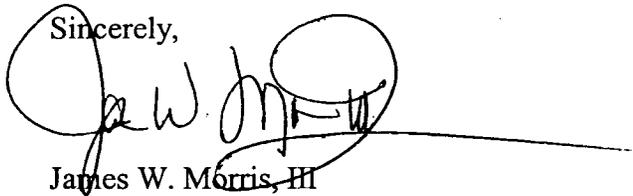
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²As we are able to make these determinations, we do not address your other arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 258316

Enc: Submitted documents

c: Ms. Leslie Bradley
Forensic Investigators, Inc.
3811 Turtle Creek Boulevard, Suite 1400
Dallas, Texas 75219
(w/o enclosures)