



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2006

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County - Justice Center  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2006-11790

Dear Ms. Fourt:

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#261397.

The Tarrant County District Attorney's Office (the "district attorney") received a request for "all files, records, and any other documents pertaining to the conviction" of a specified individual convicted of murder. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address your argument that certain responsive information consists of grand jury records that are not subject to the Act. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within their actual or constructive possession are not subject to the Act. *See Gov't Code §§ 552.003(1)(B), .0035(a); see also Open Records Decision No. 513 (1988); Open Records*

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<sup>1</sup>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.

Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of Act). 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. Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* However, "the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney." *Id.*

You state that in this case, the district attorney acted at the direction of a grand jury as their agent in preparing or collecting some of the responsive information. You have enclosed an affidavit from an Assistant Tarrant County District Attorney attesting to the fact that the information at issue is maintained by the district attorney as an agent of the grand jury and that such information was compiled at the express direction of a Tarrant County Grand Jury pursuant to a grand jury subpoena. You further state that this affidavit has been presented to this office in lieu of the actual information prepared or collected by the district attorney as the grand jury's agent. *See* Open Records Decision No. 513 at 4-5 (providing that, while district attorney need not submit copies of information obtained pursuant to a grand jury subpoena or information collected at the direction of the grand jury, governmental body should submit affidavit stating that requested information was prepared or collected at the express direction of the grand jury). Based on your representations and the submitted affidavit, we agree that information in the custody of the district attorney as agent of the grand jury is not subject to the Act.

Next, the requested information includes arrest warrants and their corresponding probable cause affidavits. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. Exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as article 15.26 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the arrest warrants and affidavits we have marked must be released to the requestor, pursuant to article 15.26 of the Code of Criminal Procedure.

Additionally, we note that the requested information is subject to section 552.022(a) of the Government Code. Section 552.022(a) of the Government Code 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 requested information consists of a completed investigation made of, for, or by the district attorney. Accordingly, the information must be released under section 552.022(a)(1) of the Government Code, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. You claim that these documents are excepted from disclosure under

sections 552.103 and 552.111 of the Government Code. Sections 552.103 and 552.111 of the Government Code are, however, discretionary exceptions that protect a governmental body's interests and may be waived. *See id.* § 552.007; *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 Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived) As such, sections 552.103, and 552.111 of the Government Code are not “other law” that makes information confidential for the purposes of section 552.022 of the Government Code. Therefore, the district attorney may not withhold any of the remaining information under sections 552.103, or 552.111 of the Government Code.

The attorney work product privilege is found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” TEX. R. CIV. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to any of the information at issue, which relates to a criminal case. Therefore, the district attorney may not withhold any of the information at issue under rule 192.5 of the Texas Rules of Civil Procedure.

However, since section 552.022(a)(1) of the Government Code provides that information made public under that section may be excepted from disclosure under section 552.108 of the Government Code, we will address the district attorney's section 552.108 claim as it pertains to the remaining information. Furthermore, because sections 552.101, 552.132, and 552.1325 of the Government Code constitute “other law” for purposes of section 552.022 of the Government Code, we will also consider these exceptions.

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) 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 that claims an exception to disclosure under section 552.108 of the Government Code must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

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, 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. In this instance, the requestor seeks the district attorney's entire case file. You assert that the information and its organization reflects the mental impressions and legal reasoning of the attorneys representing the state. You also contend that the information was gathered by attorneys in preparation for trial, and therefore constitutes attorney work product. Based on your representations and our review of the submitted representative sample of information, we agree that section 552.108(a)(4) of the Government Code is applicable in this instance.

However, section 552.108 of the Government Code 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 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); *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). The district attorney must release basic front-page information even

if this information does not literally appear on the front page of an offense or arrest report. You may choose to release all or part of the remaining information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, we agree that information in the custody of the district attorney as agent of the grand jury is not subject to the Act. The arrest warrants and affidavits we have marked must be released to the requestor, pursuant to article 15.26 of the Code of Criminal Procedure. With the exception of basic information, the district attorney may withhold the remaining information pursuant to section 552.108 of the Government Code.<sup>2</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>2</sup>As our ruling is dispositive, we need not address your remaining 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,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/krl

Ref: ID# 261397

Enc. Submitted documents

c: Ms. Karen Hamilton  
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(w/o enclosures)