



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2009

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

OR2009-08519

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# 346483.

The Tarrant County District Attorney's Office and the Tarrant County Judge (collectively, the "district attorney") each received a request from the same requestor for the records maintained on the Tarrant County's (the "county") mainframe computer of "juror histories (sentence given in a particular case)." You claim the requested juror history information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted by the requestor. *See Gov't*

¹Although you also claim the attorney work product privilege under section 552.101 of the Government Code in conjunction with rule 192.5 of the Texas Rules of Civil Procedure, this office has concluded section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).* As such, we address your arguments related to the attorney work product privilege under only section 552.111.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.108(a)(1) of the Government Code 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.” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has stated a presumption is created regarding the applicability of section 552.108(a)(1) if the criminal matter is pending and the records directly pertain to that matter. *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).

In this instance, you assert the requested juror history information pertains to all pending criminal prosecutions in the county. You have not explained, however, how the juror history information directly pertains to any particular pending criminal prosecution. Furthermore, you have not explained how or why releasing the juror history information would interfere with the detection, investigation, or prosecution of crime. *See* 531 S.W.2d 177. Consequently, you have failed to demonstrate the applicability of section 552.108(a)(1) to the requested juror history information, and the information may not be withheld on this basis.

Section 552.111 of the Government Code excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency,” and encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

- (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5. A governmental body seeking to withhold information under this exception bears the burden of demonstrating that the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. *Id.*; ORD 677 at 6-8. In order for this office to conclude the information was made or developed in anticipation of litigation, we must be satisfied: (a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation there was a substantial chance litigation would ensue; and (b) the party resisting discovery believed in good faith there was a substantial chance litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation. *See Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204; ORD 677 at 7. The second prong of the work product test requires the governmental body to show the documents at issue contain the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories. TEX. R. CIV. P. 192.5(b)(1). A document containing core work product information that meets both prongs of the work product test is confidential under rule 192.5, provided the information does not fall within the purview of the exceptions to the privilege enumerated in rule 192.5(c). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d at 427.

As previously stated, a governmental body bears the burden of establishing the applicability of the work product privilege to information it seeks to withhold under section 552.111 of the Government Code. In this instance, the requested juror history information consists of juror names, docket numbers, offenses, pleas, verdicts, sentences, sentencing dates, and courts that you explain are entered into a central database after the conclusion of criminal jury trials. Although you claim the requested juror history information is subject to the attorney work product privilege, you have failed to demonstrate how the requested information was created or developed for trial or in anticipation of litigation. Furthermore, you have failed to demonstrate any of the information constitutes an attorney's or an attorney's representative's mental impressions, opinions, conclusions, or legal theories. Consequently, you have failed to demonstrate the applicability of section 552.111 of the Government Code to the requested juror history information, and the information may not be withheld on this basis. As you have claimed no further exceptions to disclosure for the requested information, it must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 346483

Enc. Submitted documents

c: Requestor
(w/o enclosures)