



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2014

Mr. Michael L. Garza
Assistant District Attorney
Hidalgo County Criminal District Attorney
100 North Closner, Room 303
Edinburg, Texas 78539

OR2014-22265

Dear Mr. Garza:

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# 546079 (Request 2014-0116-DA).

The Hidalgo County District Attorney's Office (the "district attorney's office") received a request for all documents pertaining to Cause No. CR-3567-11-E.¹ The Hidalgo County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for all documents pertaining to a specified address, an incident involving a named victim, and the arrest of a named individual. You raise sections 552.108 and 552.111 of the Government Code on behalf of the district attorney's office and the sheriff's office. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.111 of the Government Code excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation

¹You state, and submit supporting documentation which demonstrates, the district attorney's office sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

with the agency[.]” See Gov’t Code § 552.111. This section 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) [M]aterial 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). A governmental body seeking to withhold information under this exception bears the burden of demonstrating 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 that the information was made or developed in anticipation of litigation, we must be satisfied that

(a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

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 work product doctrine under section 552.111 of the Government Code is applicable to litigation files in criminal and civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994); see also *United States v. Nobles*, 422 U.S. 225, 236 (1975). In *Curry*, the Texas Supreme Court determined a request for a district attorney’s “entire file” was “too broad” and, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), held “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.” *Id.* at 380. Accordingly, if a requestor seeks an attorney’s entire litigation file, and a governmental body demonstrates the file was created in anticipation of litigation, we will presume the entire file is excepted from disclosure under the attorney work product aspect of section 552.111. Open Records Decision No. 647 at 5 (1996); see also *Nat’l Union*, 863 S.W.2d at 461 (organization of attorney’s litigation file necessarily reflects attorney’s thought processes). However, we note the court in *National Union* also concluded a specific document is not automatically

considered to be privileged simply because it is part of an attorney's file. 863 S.W.2d at 461. The court held an opposing party may request specific documents or categories of documents that are relevant to the case without implicating the attorney work product privilege. *Id.*; ORD 647 at 5.

In this instance, you state the submitted information is maintained by the district attorney's office and the sheriff's office. You claim the requested information encompasses the entire litigation file of the district attorney's office for a pending criminal case, which was created in anticipation of or in the course of preparing for criminal litigation. As to the information responsive to the request made to the district attorney's office, we conclude the district attorney's office may withhold the submitted information under section 552.111 and the court's ruling in *Curry*.

However, we note two of the requests at issue were made to the sheriff's office rather than the district attorney's office, and no reference is made to the district attorney's file in those two requests. Therefore, we must conclude, as to the two requests made to the sheriff's office, the requestor does not seek the district attorney's litigation file but only information maintained by the sheriff's office; thus, the rationale underlying *Curry* is not applicable to the information at issue requested from the sheriff's office. Accordingly, as to the information responsive to the two requests made to the sheriff's office, the sheriff's office may not withhold the information at issue in its entirety pursuant to the rationale in *Curry*. Further, we find you have failed to demonstrate how the information responsive to the two requests made to the sheriff's office consists of information prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. Thus, the sheriff's office may not withhold the information responsive to the two requests made to the sheriff's office under section 552.111. Accordingly, we will consider your remaining arguments against disclosure of the information responsive to the two requests made to the sheriff's office.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to a pending prosecution in the 275th Judicial District Court of Hidalgo County. Based upon your representation and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) is applicable to the information at issue.

We note, 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, which the sheriff's office must release, the sheriff's office may withhold the information responsive to the two requests made to the sheriff's office under section 552.108(a)(1).³

In summary, as to the information responsive to the request made to the district attorney's office, we conclude the district attorney's office may withhold the submitted information under section 552.111 of the Government Code and the court's ruling in *Curry*. With the exception of the basic information, which the sheriff's office must release, the sheriff's office may withhold the information responsive to the two requests made to the sheriff's office under section 552.108(a)(1) of the Government Code.⁴

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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³As our ruling is dispositive, we need not address your remaining arguments under sections 552.108(a)(4), 552.108(b)(1), and 552.108(b)(3) of the Government Code.

⁴We note the basic information being released contains the social security number of an arrestee. 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. Gov't Code § 552.147(b).

Ref: ID# 546079

Enc. Submitted documents

c: Requestor
(w/o enclosures)