



July 14, 2000

Ms. Tenley A. Aldredge  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR2000-2649

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137569.

The Travis County Attorney's Office (the "county attorney") received a written request for the county attorney's case file that pertains to the prosecution of the requestor in municipal court.<sup>1</sup> You indicate that some responsive documents have been released to the requestor, including court records. *See* Gov't Code § 552.022(a)(17). You contend, however, that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code.<sup>2</sup>

Section 552.108(a)(3) of the Government Code provides that information is excepted from public disclosure if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) information that reflects the mental impressions or legal reasoning of an attorney representing the state. Section 552.108(a)(3), in essence, protects a prosecutor's "work product."

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<sup>1</sup>You state that the county attorney does not possess any records responsive to the portion of the request that seeks information regarding the costs incurred by Travis County in the prosecution of this matter. The Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986).

<sup>2</sup>We note that some of the documents you submitted to our office for our review consist of public court records, some of which contain handwritten notations by the county attorney. We assume the county attorney has released unmarked copies of these court records to the requestor. If not, these records must be released at this time.

The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *See Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (citing *United States v. Nobles*, 422 U.S. 225, 238 (1975)). In *Curry*, 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 Company v. Valdez*, 863 S.W.2d 458, 460 (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. Because the requestor in this instance seeks all the information in the county attorney's litigation file, we conclude that the county attorney may withhold the information at issue in its entirety pursuant to section 552.108(a)(3) of the Government Code as attorney work product.<sup>3</sup>

Because we resolve your request under section 552.108(a)(3), we need not address your other arguments for non-disclosure. In reaching this decision, we assume the county attorney has released to the requestor all "basic information" about the alleged criminal offense in accordance with section 552.108(c) of the Government Code and *Houston Chronicle Publishing Company 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).

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

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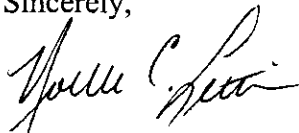
<sup>3</sup>We note, however, that a specifically requested document is not automatically considered to constitute work product simply because it is a part of an attorney's litigation file. *Valdez*, 863 S.W.2d at 461. Thus, an individual may request specific documents or categories of documents contained in the litigation file without necessarily implicating the work product privilege. The party opposing disclosure in such a case has the burden of explaining the applicability of the privilege. *Id.*

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/RWP/ljp

Ref: ID# 137569

Encl. Submitted documents

cc: Mr. Michael Hanson  
P.O. Box 19061  
Austin, Texas 78760  
(w/o enclosures)