



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 13, 1997

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
Justice Center
401 West Belknap
Fort Worth, Texas 76196-0201

OR97-2272

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110442.

The Tarrant County District Attorney (the "district attorney") received a request for information pertaining to the "arrest, investigation and trial of Darrell Lee Shirlls for aggravated robbery; Cause No. 040501." You assert that the requested information is excepted from required public disclosure based on sections 552.101 and 552.108 of the Government Code.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. You assert that information in a prosecutor's closed files is deemed confidential under *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In *Holmes*, the Texas Supreme Court held that former section 552.108 applied to prosecutors' closed files. *Holmes*, 924 S.W.2d 920. However, as this decision construed former section 552.108, and as the Seventy-fifth Legislature significantly amended the exception, *see* Act of June 1, 1997, H.B. 951, § 1, 75th Leg., R.S. (to be codified at Gov't Code § 552.108), we conclude that the *Holmes* decision does not render the requested information confidential.

You assert that the release of the statements and names of witnesses and victims would violate the common-law right to privacy of those individuals. Section 552.101 also applies to information made confidential by the common-law right to privacy. *Industrial*

Found. of the S. v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* We agree that the common-law right to privacy protects the privacy of the witnesses and victims in the case. *See Open Records Decision No. 339 (1982)*. Accordingly, the district attorney must not release to the public information that identifies the witnesses and victim as well the witness and victim statements.¹

The requested records include information that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. *Open Records Decision No. 565 (1990)*. The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also Gov't Code § 411.087* (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990)*. Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

¹In light of our conclusion above under section 552.101, we need not address your assertion that the identities and statements of the victims and witness are excepted from disclosure under section 552.108 of the Government Code. Furthermore, the remaining information in the file may not be withheld from disclosure based on section 552.108.

under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 110442

Enclosures: Submitted documents

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