



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1997

Ms. Joni M. Vollman
Assistant General Counsel
Office of the Harris County District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR97-2371

Dear Ms. Vollman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Texas Open Records Act. Your request was assigned ID# 109523.

The Office of the Harris County District Attorney (the "district attorney") received a request for all of the district attorney's files and records pertaining to its prosecution of Anthony Fuentes. The requestor stated that this request encompasses "all reports, notes, memos, records, offense reports, and witness reports" held by the district attorney. You submitted to this office a representative sample of documents responsive to the request.¹ You assert that some of the information at issue is made confidential by section 552.117 of the Government Code, and by other statutes in conjunction with section 552.101 of the Government Code. You also assert that some documents are "work product" and excepted from disclosure pursuant to section 552.108(a) (3) of the Government Code.

We note initially that some of the submitted documents are public and must therefore be released. Documents filed with a court are generally considered to be public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); *see also* Open Records Decision No. 287 (1981). We also note that it is our understanding you are asserting section 552.108(a)(3) for specific documents only. We will address your arguments against disclosure.

¹We 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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 protects from disclosure information made confidential pursuant to law, including other statutes. We have reviewed the samples submitted to this office for review and agree that some of the documents are made confidential by section 552.101, in conjunction with other statutes. Some of the submitted information contains criminal history information ("CHRI") that is confidential. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI 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 CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI 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 CHRI; 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 Code 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 CHRI 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). Further, CHRI obtained from DPS or any other Texas criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.²

You also assert that some of the submitted documents are confidential pursuant to section 18(a) of article 42.18 of the Code of Criminal Procedure. Section 18(a) provides:

Except as provided by Subsection (b), all information, including victim protest letters or other correspondence, victim impact statements, lists of inmates eligible for release on parole, and arrest records of inmates, obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any plan of release for a prisoner, is confidential and privileged.

The types of documents submitted to this office do not appear to have been obtained or maintained pursuant to section 18(a), or to be confidential under this provision.

Additionally, you assert that section 552.117 of the Government Code excepts from disclosure any of the information at issue that contains the home telephone numbers and pager numbers of peace officers. Section 552.117 provides for the confidentiality of the home addresses, home telephone numbers, and social security numbers of peace officers. Section 552.117 also

²We think that this also addresses your concerns regarding information pertaining to juveniles.

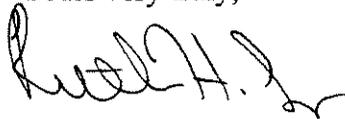
protects from disclosure information that reveals that the individual has family members. We thus agree that responsive information which contains home telephone numbers of peace officers must be protected from disclosure. In Open Records Decision Number 506 (1988) at 5, this office stated that one purpose of section 552.117 is to protect public officials and employees from being harassed while at home. We agree that pager numbers of peace officers may be withheld from disclosure.

Section 552.108(a)(3) provides that information is excepted from public disclosure under the Open Records Act if it is information that is either (1) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (2) if it is information that reflects the mental impressions or legal reasoning of an attorney representing the state.³ In correspondence to this office, you asserted this exception for the submitted information "including handwritten notes of prosecutors, jury questionnaires and notations thereupon reflecting the prosecutor's thought processes in jury selection, investigator notes and summaries and the capital murder summary prepared by a prosecutor at the time of charging." We agree that section 552.108(a)(3) protects this information from disclosure.⁴

However, section 552.108(c) provides that basic information about an offense may not be withheld from disclosure under section 552.108. Front page offense and arrest report information, which are generally public, constitute this type of basic information about the offense and thus must be disclosed. *See generally Houston Chronicle Publishing 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); Open Records Decision No. 127 (1976).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

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³The Seventy-Fifth Legislature amended section 552.108. *See* Act of June 1, 1997, H.B. 951, § 1, 75th Leg., R.S. (to be codified at Gov't Code § 552.108).

⁴We note that article 35.29 may govern access to personal information in the jury questionnaires of jurors who served.

Enclosures: Submitted documents

cc: Mr. Gary Taylor
P.O. Box 90212
Austin, Texas 78709-0212
(w/o enclosures)