



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 3, 1998

Ms. Tina Morales
Senior Records Analyst
Office of the District Attorney
P.O. Box 1748
Austin, Texas 78767

OR98-1576

Dear Ms. Morales:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116233.

The Travis County District Attorney's Office (the "district attorney") received a request for records concerning a rape case and subsequent prosecution. You state that the court records, front page offense report information, and another document from the case file have been provided to the requestor. However, you submitted to this office records that you contend are excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We first address your section 552.108 argument, since you assert that section 552.108(a)(3) excepts all of the submitted information from disclosure.¹

Section 552.108(a)(3) protects from disclosure records held by a law enforcement agency or prosecutor if the information

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

¹We note that you assert because the requestor sought the entire file, the records are protected in their entirety under *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). In Open Records Decision No. 647 (1996) at 5, this office determined that if a requestor asks for an attorney's entire file regarding particular litigation, such a request may be denied in its entirety under section 552.111 based on the Texas Supreme Court's holding in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993). In *National Union*, the court held that a request for an attorney's entire litigation file is "objectionable under the attorney work product exemption from discovery." *Id.* We note that since you have already released some records from the prosecuting attorney's case file to the requestor, you apparently do not seek to withhold the case file in its entirety.

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You argue that section 552.108(a)(3)(A) is applicable to all of the records in the file, including the police investigation and medical records, as information that was either prepared or obtained by the prosecuting attorney. We note that section 552.108(a)(3)(A) excepts from disclosure information prepared by an attorney representing the state, but this statutory exception does not address information that was merely obtained by the prosecuting attorneys. It does not except from disclosure documents and correspondence from the defense attorney, nor does it except documents that are generally a matter of public record such as documents that are filed with a court. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) However, we agree that various records at issue were prepared by the prosecuting attorneys and are excepted from disclosure under section 552.108(a)(3)(A).

You assert that section 552.108(a)(3)(B) is applicable because the information “reflects the mental impressions or legal reasoning of the prosecuting attorney in preparing for criminal prosecution of this case, and as information which reflects the mental impressions or legal reasoning of the prosecuting attorney.” Based upon your assertion and our review of the documents, we agree that some of the submitted records are excepted under section 552.108(a)(3)(B) as information that reflects the mental impressions or legal reasoning of the prosecuting attorneys. However, it is not apparent to this office, nor have you explained, how police incident reports created by the police department in the regular course of a police investigation reflect the mental impressions or legal reasoning of the prosecuting attorney so as to fit within the section 552.108(a)(3)(B) exception.² Therefore, the police incident reports must be released after identifying information about the victim has been redacted.

We have labeled the information in the submitted records that is protected from disclosure under section 552.108 of the Government Code. We will address the remaining information, which includes information in Exhibits A, C, and E. You assert that the Exhibit A records are protected from disclosure under section 552.101 of the Government Code. Section 552.101 protects from disclosure information that is made confidential by law. You contend that some of the records constitute confidential criminal history record information (“CHRI”). Section 552.101 applies to information that is made confidential by law, including information made confidential by statute. 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

²We note that this office has previously agreed section 552.108(a)(3) may protect incident reports where portions are highlighted by the prosecuting attorney or notations were made on the report by the prosecuting attorney. This is not the situation with this information.

411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS 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. We agree that the CHRI is confidential and must be withheld from disclosure.

Exhibits A and E contain information concerning the victim and her family. There are certain types of crimes in which the release of identifying information about the victim and a detailed description of the offense may implicate an individual's common-law privacy interests. In *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court said that information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. The type of information the supreme court considered intimate and embarrassing included information such as that relating to sexual assault. *Id.* Thus, in Open Records Decision No. 339 (1982), this office determined that all identifying information regarding a sexual assault victim must be withheld from disclosure. That opinion stated:

The mere fact that person has been the object of a rape or attempted rape does, we believe, reveal "highly intimate or embarrassing facts" about the victim, and, in our view, disclosure of this fact would be "highly objectionable to a person of ordinary sensibilities. Although there is certainly a strong public interest in knowing that a crime has been committed, we do not believe that such interest requires the disclosure of the names of the victims. Furthermore, certain other information, such as the location of the crime, might furnish a basis for identification of the victim.

We agree that the information that serves to identify the victim is generally confidential, unless the victim's identity was made public during the prosecution.

Please note that Exhibit A also contains drivers' license numbers, which are generally confidential under section 552.130 of the Government Code. This information must be withheld from disclosure.

Exhibit C contains medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

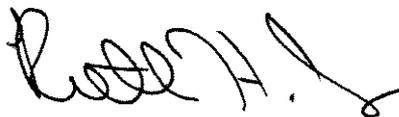
(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the city police department obtained the records. Open Records Decision No. 565 (1990) at 7. Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

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 questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 116233

Enclosures: Submitted documents

cc: Mr. David Botsford
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(w/o enclosures)