

January 11, 1999

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

OR99-0077

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120951

The Harris County District Attorney received a request for all files concerning the state's capital murder case against Garcia Glen White. You indicate that you will release some of the requested information to the requestor. You argue, however, that three categories of information, submitted as Exhibits A - C, are excepted from required public disclosure by sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample documents.¹

You first argue that the information in Exhibit A is excepted from disclosure by section 552.108. Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

* * *

(3) it is information that:

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

¹In reaching our conclusion here, we 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 Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.



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

* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain the documents in Exhibit A constitute the prosecutor's work product. You state that the information you seek to withhold in Exhibit A consists of the "handwritten and typewritten notes prepared by a prosecutor and her investigator, the cover folder of the prosecutor's file, which contains handwritten notes of prosecutors, [and] juror questionnaires and juror cards containing the handwritten notes of the prosecutors." After examining Exhibit A, it appears that the information you seek to withhold was prepared by an attorney representing the state in criminal litigation. The information you seek to withhold in Exhibit A is protected from disclosure under section 552.108(a)(3)(A).²

You next argue that the material in Exhibit B must be withheld under section 552.101. Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected

²We also point out that certain information on the jury questionnaires is made confidential by article 35.29 of the Code of Criminal Procedure. Article 35.29 provides as follows:

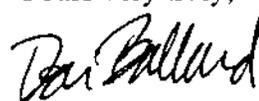
Information collected by the court or by a prosecuting attorney during the jury selection process *about a person who serves as a juror*, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court *in which the person is serving or did serve as a juror*. On a showing of good cause, the court shall permit disclosure of the information sought. [Emphasis added].

by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, any CHRI in your possession that falls within the ambit of these state and federal regulations must be withheld.

Finally, you assert that the material in Exhibit C must be withheld because it is confidential grand jury testimony. The Open Records Act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of a grand jury as the grand jury’s agent, information prepared or collected by the agent is within the grand jury’s constructive possession. *Id.* Information not held or maintained in this manner is not exempt from the act’s coverage and may be withheld only if one of the act’s specific exceptions applies to the information. *Id.* Furthermore, information obtained pursuant to a grand jury subpoena issued in connection with this prosecution is within the grand jury’s constructive possession and is not subject to the act. *Id.* *See also* Gov’t Code § 552.003. Because Exhibit C consists of the transcription of grand jury testimony, it appears that the information is within the constructive possession of the grand jury. As such, the information is not subject to disclosure under the Open Records Act.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 120951

Enclosures: Submitted documents

cc: Mr. R. J. Vargas
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(w/o enclosures)