

February 2, 1999

Ms. Joni M. Vollman
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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# 121723.

The Harris County District Attorney received a request for all materials disclosed to trial defense attorneys under cause number 719146. You indicate that you will release some of the requested information to the requestor. You argue, however, that five categories of information, submitted as Exhibits A - E, are excepted from disclosure by sections 552.101, 552.108, and 552.117 of the Government Code.

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;

(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 notes of prosecutors and their investigators, the cover folder of the prosecutor's file, which contains handwritten notes of prosecutors, juror questionnaires, which contain handwritten notes of the prosecutors..., the D.I.M.S. sheet, the capital murder summary report and state copies of draft copies of subpoenas that have handwritten notations on them (clean copies of the subpoenas are provided to the requestor)." 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).¹

You assert 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 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

¹We 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.].

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.

You next contend that the victim impact statements in Exhibit C are confidential pursuant to section 18(a) of article 42.18 of the Code of Criminal Procedure. Section 18(a) of article 42.18 of the Code of Criminal Procedure has been recodified and is now section 508.313 of the Government Code. Section 508.313 of the Government Code provides:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a release; or

(3) a person directly identified in any proposed plan of release for an inmate.

This provision accords confidentiality to the records of the Board of Pardons and Paroles. Open Records Decision No. 190 at 2 (1978); *see also* Attorney General Opinion H-427 (1974); Open Records Decision No. 33 (1974). It does not, however, make confidential records in the custody of the district attorney. Thus, the victim impact statements are not confidential pursuant to section 508.313 of the Government Code.

Notwithstanding the above, a marked portion of Exhibit C here contains information excepted from public disclosure by a right of privacy under section 552.101. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is 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. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). We have marked the portion that must be withheld. Except for this marked material, the information in Exhibit C must be released.

You next claim that portions of information submitted as representative samples in Exhibit D which reflects police officers' home phone numbers and addresses are excepted from disclosure under section 552.117 of the Government Code. Section 552.117 of the Government Code provides that information may be withheld if it is:

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

* * *

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

You must, therefore, withhold the peace officers' home addresses and home telephone numbers. Open Records Decision Nos. 532 (1989), 530 (1989).

Finally, you assert that the information contained in Exhibit E must be withheld under section 552.101 because it contains juvenile criminal history reports and records. The Texas Department of Public Safety is responsible for recording data and maintaining a database for the juvenile justice information system. Fam. Code § 58.102(a). The information contained in this system is confidential, and may be released only in certain limited circumstances. Open Records Decision No. 655 (1997). Section 58.106 of the Family Code provides in relevant part that

(a) Except as provided by Subsection (b), information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) to a juvenile justice agency; and

(4) to the Criminal Justice Policy Council, the Texas Youth Commission, and the Texas Juvenile Probation Commission for analytical purposes.

(b) Subsection (a) does not apply to a document maintained by a juvenile justice agency that is the source of information collected by the department.

If any of the information in Exhibit E was obtained from the juvenile justice information system, it must be withheld as none of the exceptions to confidentiality appear to apply.

Furthermore, you assert that the records in Exhibit E must be withheld under section 51.14 of the Family Code. Section 51.14(d) of the Family Code was repealed by the Seventy-fourth Legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. Currently, section 58.007 of the Family Code provides that law enforcement records concerning a child must not be publicly disclosed. Fam. Code § 58.007(c). However, the most current bill which amended section 58.007(c) provides that “[c]onduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose.” Act of June 2, 1997, 75th Leg., R.S., ch. 1086, § 53(b), 1997 Tex. Gen. Laws 4179, 4199.

It appears that the juvenile records at issue here concern conduct that occurred before January 1, 1996. The applicable law in effect was former Family Code section 51.14 which provides, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. In Open Records Decision No. 181 at 2 (1977), this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. *See also* Open Records Decision No. 394 at 4-5 (1983) (applying former Fam. Code § 51.14(d) to “police blotter” and related information). You do not indicate that the records at issue here relate to

charges for which the juvenile was transferred under section 54.02 of the Family Code to a criminal court for prosecution, or that article 15.27 of the Code of Criminal Procedure applies. Moreover, we are unable to determine that any of the exceptions to former section 51.14(d) apply to the requestor. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Accordingly, any juvenile records covered by former section 51.14(d) must be withheld under section 552.101.

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# 121723

Enclosures: Submitted documents

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(w/o enclosures)