



April 28, 1999

Ms. Tammy Harrison
Assistant District Attorney
Dallas County District Attorney
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR99-1170

Dear Ms. Harrison:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the “act”), chapter 552 of the Government Code. Your request was assigned ID# 123852.

The Dallas County District Attorney’s Office (the “district attorney”) received a request for “all information . . . pertaining to Case #F98-14000I,” concerning a specified defendant. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive. You indicate that you will release some of the requested information to the requestor. You argue, however, that four categories of information, submitted as Exhibits C-F, are excepted from required public disclosure by sections 552.101 and 552.108¹ of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.²

Initially, we consider your assertion that “Exhibit D exemplifies snippets of grand jury testimony found in the file.” You contend that these documents are confidential by law. Article 20.02(a) of the Code of Criminal Procedure states that “[t]he proceedings of the grand jury shall be secret.” Thus, information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and excepted from disclosure under section 552.101 of the Government Code. Additionally, in Open Records

¹In your letter to this office, you also cite to section 552.028 in the context of “information that deals with the detection, investigation, or prosecution of crime,” which is contemplated under section 552.108. Therefore, since you offered no further support for section 552.028 of the act, we presume that the reference to section 552.028 was merely a typographical error.

²You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

Decision No. 513 (1988), this office concluded that grand juries are not subject to the Public Information Act, and that records within the constructive possession of grand juries are not public information subject to disclosure under the Public Information Act. *See* Gov't Code § 552.003. Based upon these considerations, we conclude that the district attorney must withhold Exhibit D from disclosure.

We next consider your assertion that the material in Exhibit C must be withheld under section 552.101. Section 552.101 of the Government Code exempts 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 criminal history record information (“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; § 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, we consider your arguments that the requested information is excepted from disclosure under section 552.108, the “law enforcement” exception. Section 552.108 of the Government Code provides in part:

(a) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

* * *

(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; or

(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 the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

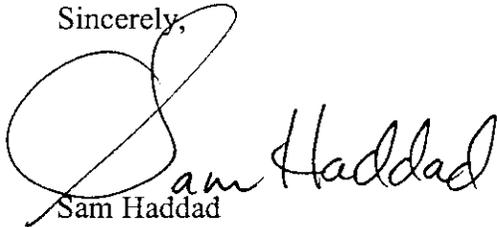
You state that “[t]his office submits that the State remains a party to potential litigation until the time that Mr. Williams completes his deferred adjudication probation.” You further state that the suspect in the prosecution at issue “pled guilty to theft and was placed on five years’ [sic] deferred adjudication probation.” Although you seek to withhold the requested information under section 552.108(a)(1), it appears that the investigation has concluded. In addition, you do not explain how the disclosure of this information would interfere with the detection, investigation, or prosecution of crime when the perpetrator has already been sentenced. Further, we conclude that section 552.108(a)(2) is inapplicable since the investigation has concluded in a final result of deferred adjudication. Under the facts presented, we conclude that you have failed to meet your burden under section 552.108(a)(1) and (a)(2); therefore, you may not withhold the requested information under these provisions.

However, as for Exhibit E, you specifically argue that the documents at issue “clearly fall into the category of information ‘prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation’ and are therefore protected.” Section 552.108(a)(3) provides that information is excepted from public disclosure under the Public Information Act if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) if it is information that reflects the mental impressions or legal reasoning of an attorney representing the state. We agree that Exhibit E contains information prepared

by an attorney in anticipation of or in the course of preparing for criminal litigation. Therefore, you may withhold Exhibit E under section 552.108(a)(3)(A) of the Government Code. Since the information submitted as Exhibit F is not subject to any of the claimed exceptions such information may not be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ 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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH\nc

Ref: ID# 121233

Encl: Submitted documents

cc: Ms. Phyllis Lambert
Monning & Wynne, L.L.P.
Cumberland Hill School Building
1901 North Akard Street
Dallas, Texas 75201-2305
(w/o enclosures)

³In reaching our conclusion, 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.