



June 3, 1999

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

OR99-1544

Dear Ms. Vollman:

You ask 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# 124590.

The Harris County District Attorney (the "district attorney") received a request for information concerning a specified cause number. In response to the request, you submit to this office for review a representative sample of the information at issue.¹ You indicate that you will release some of the requested information to the requestor. You argue, however, that the remaining requested information, submitted as Exhibits A and B, is excepted from disclosure by sections 552.101 and 552.108 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:

* * *

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 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.

(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 that the documents in Exhibit A constitute the prosecutor's work product. The information you seek to withhold in Exhibit A consists of the "the cover folder of the prosecutor's file, which contains handwritten notes of prosecutors, a research memorandum prepared at the prosecutor's request, central intake screening reports and handwritten notes of 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 or by an individual working at the direction of such an attorney. Therefore, the information you seek to withhold in Exhibit A is protected from disclosure under section 552.108(a)(3)(A).²

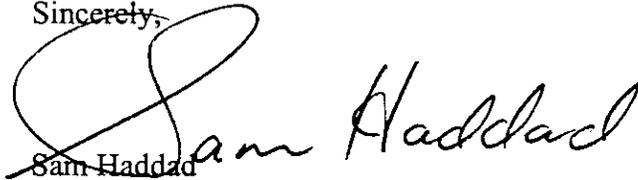
You assert that the material in Exhibit B must be withheld under section 552.101. Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other 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 agency that would not be eligible to receive the information

²We note that, pursuant to section 552.108(c), the district attorney may not withhold "basic information" about the offense from the requestor. *See* Gov't Code § 552.108(c) (section 552.108 does not except from disclosure basic information about arrested person, arrest, or crime). We assume for purposes of this ruling, however, that such information was contained within the documents you have previously released to the requestor.

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.

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.

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# 124590

encl.: Submitted documents

cc: Mr. Frederick L. Fuhr
Marvin L. Radar & Associates
622 West Main Street
League City, Texas 77573-3729
(w/o enclosures)