



June 24, 1999

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

OR99-1763

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125429.

The Harris County District Attorney's Office (the "district attorney") received a request for all documents regarding a case involving Danny Shane Lewis. You have released certain documents to the requestor, but contend that the remaining requested information is excepted from public disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documents.

You first contend that the documents you submitted to this office as Exhibit A are excepted from public disclosure pursuant to section 552.108 because they constitute "work product" and the release of this information will interfere with the investigation of crime. Initially, we note that Exhibit A includes an autopsy report and autopsy photographs. An autopsy report prepared by a medical examiner is expressly made public by the Code of Criminal Procedure. Code Crim. Proc. art. 49.25, § 11. Therefore, you must release the autopsy report and photographs.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). 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 although the case was dismissed, the investigation continues and will be presented again to a grand jury. Because the criminal

investigation is ongoing, we believe that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” *Id.* Thus, you may withhold most of the information in Exhibit A under section 552.108(a)(1).¹

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you must release the basic front page offense and arrest information.² We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

You contend that the documents in Exhibit B are excepted from public disclosure pursuant to section 552.101 of the Government Code, which protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Exhibit B consists of criminal history record information (“CHRI”). We agree that the district attorney must withhold pursuant to statutory law all criminal history information obtained from the Texas Crime Information Center (“TCIC”) and National Crime Information Center (“NCIC”). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The district attorney therefore must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code.

Next, you assert that Exhibit C is confidential by law because it consists of medical records. Access to medical records is governed by provisions outside the Public Information Act. Open Records Decision No. 598 (1991). The Medical Practice Act (the “MPA”), article 4495b of Vernon’s Texas Civil Statutes, protects from disclosure “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained

¹Because section 552.108(a)(1) is dispositive of Exhibit A, we need not address your other claimed exceptions.

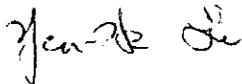
²Generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

by a physician.” V.T.C.S. art. 4495b, § 5.08(b). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA.

Finally, you assert that the material in Exhibit D must be withheld because it is confidential grand jury records. The Public Information 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 D consists of grand jury records and a grand jury subpoena, 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 Public Information 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 125429

Encl.: Submitted documents

cc: Mr. Timothy A. Hootman
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(w/o enclosures)