



November 29, 1999

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

OR99-3409

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129959.

The Office of the Harris County District Attorney (the "district attorney") received a request for the district attorney's file pertaining to a named criminal defendant. You state that the district attorney has released "certain documents" to the requestor,¹ but contend the remaining requested information is excepted from public disclosure pursuant to sections 552.101, 552.108(a)(3), and 552.117 of the Government Code.

You first contend that the documents you submitted to this office as Exhibit A constitute "work product" that is excepted from public disclosure pursuant to section 552.108(a)(3). Section 552.108(a)(3) provides that information is excepted from public disclosure under the Open Records 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. Among the contents of Exhibit A are the handwritten and typed notes of prosecutors and their investigators, the DIMS report, and the cover folder of the prosecutor's files. Assuming these documents were either created by an attorney

¹We assume the district attorney has released all "basic information" about the criminal offense in accordance with *Houston Chronicle Publishing Company 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).

representing the state, or by an individual working at the direction of such an attorney, we agree that most of the documents contained in Exhibit A may be withheld pursuant to section 552.108(a)(3)(A) or 552.108(a)(3)(B), respectively. We have marked a few of the records contained in Exhibit A that may not be withheld under either of these exceptions because they have previously been released to outside parties.

Exhibit A also contains juror information cards. Although you state you have marked certain information in the cards “evidencing the prosecutor’s thought and mental processes in selecting a jury,” this office could discern no such markings. We note, however, that portions of the juror information cards are 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].

Article 35.29 makes confidential certain personal information pertaining to only those individuals who actually served on the petit jury in a criminal trial. We have marked the types of information on the first four cards contained in Exhibit A that the district attorney must withhold with regard to the jurors who served on the petit jury. The district attorney must release the remaining information on the juror cards to the requestor.

You contend the documents you submitted to this office as Exhibits B through D 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. We agree that the district attorney must withhold pursuant to statutory law all criminal history information obtained from the TCIC and 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 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. 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).

You characterize the contents of Exhibit C as information provided by the district attorney for the criminal defendant's "pre-sentence investigation report." These documents consist of a collection of statements from various individuals regarding the criminal defendant. Assuming these statements were in fact considered during the pre-sentence investigation, we will consider your argument for withholding these statements.² Section 9(j) of article 42.12 of the Code of Criminal Procedure governs the release of pre-sentence investigation reports and related documents to the public and provides in pertinent part:

The judge by order may direct that any information and records that are not privileged and that are relevant to the report required by Subsection (a) of this section be released to the officer conducting the presentence investigation The report and all information obtained in connection with the presentence investigation are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), and (g) of this section and as directed by the judge for the effective supervision of the defendant. . . .

It is not apparent to this office that the circumstances listed in subsections (d) through (g) of section 9 are applicable here. Accordingly, the district attorney may not release the statements contained in Exhibit C to the requestor.

Exhibit D consists of the medical records of a rape victim. The release of medical records is governed by section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), which provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the

²The actual pre-sentence investigation report was not among the documents you submitted to this office.

Encl.: Submitted documnets

cc: Mr. John Holzwarth
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(w/o enclosures)

patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 (1990) at 7. The medical records contained in Exhibit D may be released only in accordance with these provisions of the MPA. Open Records Decision No. 598 (1991).

Finally, you contend that portions of Exhibit E are excepted from public disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) makes confidential all information that relates to the home address, home telephone number, or social security number of a peace officer as defined by article 2.12, Code of Criminal Procedure. Section 552.117(2) also makes confidential all information that reveals whether such a peace officer has family members. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We agree that to the extent that Exhibit E contains the types of information protected under section 552.117(2), the district attorney must withhold such information. The district attorney must release, however, all remaining portions of Exhibit E to the requestor.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/jc

Ref.: ID# 129959