



December 3, 1999

Mr. John Schomburger  
Assistant Criminal District Attorney  
County of Collin  
210 S. McDonald, Suite 324  
McKinney, Texas 75069

OR99-3473

Dear Mr. Schomburger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129552.

The County of Collin (the "county") received a request for all records related to three criminal cases, cause numbers 003-82555, 003-80496 and 003-80497. You contend that sections 552.101, 552.108 and 552.111 of the Government Code except the responsive information from disclosure. We have considered the exceptions you claim and reviewed the submitted information.

We initially note that the Public Information Act requires a governmental body that wishes to withhold requested information to inform the requestor that it has sought a decision from the Attorney General and to provide the requestor with a copy of its request for decision, within ten business days of the governmental body's receipt of the request for information. Gov't Code § 552.301. If the governmental body fails to comply with these requirements, the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. In this case, we cannot determine that you have complied with these requirements. Neither section 552.108 nor 552.111 of the Government Code, when raised to protect the interest of the governmental body which received the request for information, provide a compelling reason to withhold information. If you have not complied with the requirements of section 552.301, no information may be withheld pursuant to section 552.108 or 552.111.

The submitted materials include court orders and other documents which are apparently also maintained in court records. The 76<sup>th</sup> Legislature amended section 552.022 of the

Government Code to provide several categories of information that are not excepted from required disclosure unless they “are expressly confidential under other law.”<sup>1</sup> In pertinent part this section now reads

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

- (12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

...

- (17) information that is also contained in a public court record

Also, documents filed with the court are usually public documents and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Therefore, these documents must be released.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes and by the common law right of privacy. You assert that the responsive information includes criminal history report information. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information (“CHRI”) which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the “DPS”) maintains. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. Further, where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See United States Dep’t of*

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<sup>1</sup>Act of May 25, 1999, 76<sup>th</sup> Leg. R.S. ch 1319, §5, 1999 Tex. Gen. Laws 4500 4501-4502 (effective September 1, 1999).

*Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision Nos. 616 (1993), 565 (1990). In this case, the request is for a compilation of information related to specific cases rather than any particular individual. The requestor has not sought, and the submitted materials do not include, CHRI provided by the DPS, FBI or any other criminal justice agency. In the context of this request, we do not construe the submitted materials to be a compilation of any individual's criminal history.

Your argument invokes several provisions of section 552.108 of the Government Code. That section reads

- (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:
  - (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.
- (b) 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 internal record or notation would interfere with law enforcement or prosecution;
  - (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(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.

Note that “basic information” is not excepted by this section. Gov’t Code 552.108(c). We believe such basic information refers to the “front page” information held to be public in *Houston Chronicle Publishing 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, “front page” information is specifically made public and must be released.

We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. *See 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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). From our review of the submitted materials, it appears that at least one of the cases resulted in a conviction. Information relating to those subject cases that are pending prosecution or investigation may be withheld under section 552.108(a)(1) unless the information is otherwise made public.

Section 552.108(a)(2) excepts information in cases that have concluded with a result other than conviction or differed adjudication. If the subject cases have finalized with a result other than conviction or differed adjudication, the subject information not otherwise made public may be withheld under section 552.108(a)(2).

Section 552.108(b)(1) excepts from disclosure “[a]n 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” This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When this section is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3(1986). Whether disclosure of particular

records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). As you do not explain how release of the responsive information would interfere with law enforcement, we conclude that you have not demonstrated that section 552.108(b)(1) excepts this information from disclosure.

Subsections (a)(3) and (b)(3) of section 552.108 excepts information from disclosure if the information is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental impressions or legal reasoning of an attorney representing the state. You state "some of the requested documents were prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation and also reflect the mental impressions and legal reasoning of an attorney representing the state." From our review of the submitted materials, we deduce that the hand-written notes and entries in these documents, as well as any other document that was prepared by a prosecuting attorney in these cases, may be withheld under sections 552.108(a)(3) and 552.108(b)(3).

Section 552.111 of the Government Code excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process, or reflect an attorney's mental processes in regard to pending or anticipated litigation. Open Records Decision Nos. 615 (1993), 647 (1996). In this case, section 552.111 does not protect information not otherwise excepted from disclosure by Government Code sections 552.108(a)(3) or 552.108(b)(3).

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,



Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 129552

Encl. Submitted documents

cc: Mr. Mark Gilliam  
P.O. Box 774  
Glendale, Arizona 85311  
(w/o enclosures)