



March 15, 2000

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2000-1042

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134236.

The Travis County Attorney received a request for information received from Huston-Tillotson College in connection with a 1997 hazing incident as well as the prosecutor's entire file in the matter. You indicate that you have released most of the information responsive to the request. You seek to withhold portions of the information under sections 552.101, 552.111 and 552.108 of the Government Code.

Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters. In Open Records Decision No. 647 (1996), this office concluded that pursuant to the rationale set forth in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993), a request for an attorney's entire litigation file may be denied under either section 552.103 or section 552.111 of the Government Code, depending upon whether the litigation is reasonably anticipated, pending, or concluded. Open Records Decision No. 647 (1996). In this instance, the requestor seeks the county attorney's entire case file. Litigation relating to the file has apparently concluded. Under the circumstances, you may, except as noted below, withhold the requested file from disclosure pursuant to section 552.111.¹

We note that section 552.022(a)(17) requires release of "information that is also contained in a public court record" unless it is confidential by law. Accordingly, you may not withhold,

¹Although you claimed the exception for the entire prosecutor's file under section 552.108, as indicated above, this office treats such exception, and will consider it here, as an aspect of section 552.111.

under section 552.111, any of the submitted information which “is also contained in a public court record.”

We note, too, that this office does not consider specifically requested information, even where it is contained in a prosecutor’s file, as subject to the rationale set out in *National Union Fire Insurance*. Here, the requestor has specifically requested information the county attorney obtained from Huston-Tillotson College. Such information is not subject to an exception under the *National Union Fire Insurance* rationale. Moreover, it is not apparent from your brief or from the face of the information you submitted as responsive to the request, which information was obtained from Huston-Tillotson College. Therefore, although you may withhold the submitted information under section 552.111 to the extent it was not obtained from Huston-Tillotson College and is not subject to section 552.022(a)(17), we will address your other claimed exceptions with regard to submitted information.

Section 552.101 requires withholding, *inter alia*, information made confidential by law. The submitted information contains criminal history record (“CHRI”) information which is made confidential by law. 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 itself.”). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. 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). You must withhold the submitted CHRI under the above provisions.

Section 9(j) of article 42.12 of the Code of Criminal Procedure makes confidential, with exceptions which do not appear to apply here, all information obtained in connection with a presentence investigation report. You must withhold the submitted presentence investigation materials under this provision.

The Texas Medical Practice Act (“MPA”), in section 159.002(b) of the Occupations Code, provides:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

You may not release the submitted medical records except in accordance with the MPA.

Section 552.108 of the Government Code excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

.....

(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 . . . if:

.....

(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.

We have reviewed your arguments for withholding the submitted information under section 552.108(a)(3) and (b)(3). To the extent that the information was obtained from Huston-Tillotson College, we do not believe that the information may be withheld under section 552.108(a)(3) and (b)(3), because such material was not "prepared by an attorney representing the state" and you have not shown that the information reflects the "mental impressions or legal reasoning of an attorney representing the state" pursuant to section 552.108(a)(3) or (b)(3). We have marked portions of the submitted information which appear to have been obtained from Huston-Tillotson College. This and other information obtained from Huston-Tillotson College must be released. As noted earlier, the submitted information which was not obtained from Huston-Tillotson College may be withheld under section 552.111 if not also contained in a public court record.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

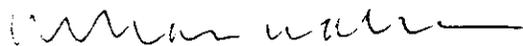
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 134236

Encl. Submitted documents

cc: Mr. Michael J. Clark
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(w/o enclosures)