



April 10, 2000

Mr. Brian L. Rose
Assistant General Counsel
Office of the District Attorney
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002

OR2000-1389

Dear Mr. Rose:

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# 135062.

The Harris County District Attorney's Office ("district attorney") received a request for a "full copy" of the District Attorney's file for cause no. 518747-A. You explain that information contained in appendix B has been released to the requestor, but contend that information contained in appendixes C and D is excepted from public disclosure pursuant to section 552.108 of the Government Code. You also argue that the documents in appendix E are confidential by statute pursuant to Government Code section 552.101. We have considered the exceptions you claim and reviewed the submitted documents.

You contend that the documents submitted as appendix C constitute "prosecutorial work product" that is excepted from public disclosure pursuant to subsections 552.108(a)(3) and 552.108(b)(3). Section 552.108(a)(3) provides that information is excepted from public disclosure 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. Appendix C contains a copy of a state subpoena application with handwritten notations, handwritten notes, an intake screening report, a research information form, and the district attorney's offense report containing a description of the offense. Assuming these documents were created by an attorney representing the state, or by an individual working at the direction of such an attorney, we agree that the district attorney may withhold the documents contained in appendix C pursuant to section 552.108(a)(3).

However, section 552.108 does not except from public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally 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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). Therefore, except for basic information, you may withhold the subject information from disclosure.

Next, you assert that the information contained in appendix D comprises criminal history record information (“CHRI”). Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989), the U.S. Supreme Court concluded that where an individual’s CHRI is compiled or summarized by a governmental entity, the information takes on a character that implicates an individual’s right of privacy in a manner that the same individual records in an uncompiled state do not. Criminal history record information generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential pursuant to federal and state statutes and regulations. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See also* Gov’t Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). 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. *See generally id.* §§ 411.090 - .127. Thus, you must withhold the CHRI from the requestor.

You also argue that the documents in appendix E, which consist of juror information cards, are excepted from disclosure by section 552.101. Portions of 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). In the instant case, in addition to the confidential information listed in article 35.29, "other personal information" which is confidential pursuant to article 35.29 includes the juror's present employer, business telephone number, and spouse's employer. For your reference, the first four cards in appendix E have been marked to indicate the types of information the district attorney must withhold. The remaining information on the juror cards must be released to the requestor.

Article 35.29 makes confidential certain personal information pertaining only to those individuals who are serving or did serve on a jury in a criminal trial. You must release the juror cards of those individuals who did not serve on the petit jury in a criminal trial.

This letter ruling is limited to the particular records at issue in this request and 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,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/cwt

Ref: #135062

Encl. Submitted documents

cc: Ms. Gladys M. Viera
1239 Bay Area Boulevard, #803
Houston, Texas 77958
(w/o enclosures)