



January 29, 2001

Ms. Larissa T. Roeder  
Assistant District Attorney  
Dallas County  
Frank Crowley Courts Building, LB 19  
Dallas, Texas 75207-4399

OR2001-0329

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143700.

Dallas County (the "county") received a request for information related to a specified criminal prosecution. The request is made by an attorney representing the purported victim of the offense being prosecuted. You claim that the requested information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information made confidential by statute.

Exhibits 3 and 7 appear to be information related to reports of child abuse or neglect. Section 261.201 of the Family Code governs release of such information. In pertinent part it reads:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. We are of the opinion that exhibits 3 and 7 consist of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. This information is therefore confidential by statute. As you have not cited any specific rule that the county has adopted with regard to the release of this type of information, these records are presumed confidential in their entirety. *See* Open Records Decision No. 440 at 2 (1986). Accordingly, the county must withhold exhibits 3 and 7 under section 552.101 of the Government Code.

Exhibit 4 consists of criminal history record information. Criminal history record information generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is made confidential by statute. 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). 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 (the “DPS”) maintains, except that the DPS may disseminate such records 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, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Exhibit 4 must therefore be withheld under section 552.101 of the Government Code.

Exhibit 5 consists of "Juror Information Cards." Information collected about jurors in the jury selection process is governed by article 35.29 of the Code of Criminal Procedure, which provides:

[i]nformation 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.

Code Crim. Proc. art. 35.29. Exhibit 5 must be withheld under section 552.101 of the Government Code.

Exhibit 6 consists of a transcript of grand jury testimony. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so that records within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). Grand jury testimony is recorded pursuant to article 20.012 of the Code of Criminal Procedure. Release of such information is governed by article 20.02(c) of this code, which provides:

[a] disclosure of a record made under Article 20.012, a disclosure of a typewritten transcription of that record, or a disclosure otherwise prohibited by Subsection (b) or Article 20.16 may be made by the attorney representing the state in performing the attorney's duties to a grand juror serving on the grand jury before whom the record was made, another grand jury, a law enforcement agency, or a prosecuting attorney, as permitted by the attorney representing the state and determined by the attorney as necessary to assist the attorney in the performance of the attorney's duties. The attorney representing the state shall warn any person the attorney authorizes to receive information under this subsection of the person's duty to maintain the secrecy of the information. Any person who receives information under this subsection and discloses the information for purposes other than those permitted by this subsection is subject to punishment for contempt in the same manner as persons who violate Subsection (b).

Code Crim. Proc. art. 20.012. We conclude that exhibit 6 is not subject to the disclosure requirements of chapter 552 of the Government Code.

Exhibit 8 consists of items contained in the prosecution file for which you assert no other exception to disclosure other than section 552.108 of the Government Code.

In pertinent part, this section provides:

- (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:

...

- (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 [.]

Gov't Code § 552.108(a)(3)(A). From our review of the information submitted as exhibit 8 we note that these materials consist of handwritten notes. From your comments and our review of these materials we conclude that this information was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation. We conclude that the information submitted as exhibit 8 may be withheld under section 552.108(a)(3) of the Government Code. Note that the protection of this exception is not contingent on the pendency of the prosecution.

In conclusion, grand jury information is not subject to chapter 552 of the Government Code and therefore need not be released. The information which we have identified as subject to section 552.101 of the Government Code must be withheld, and all other responsive information may be withheld under section 552.108(a)(3).

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

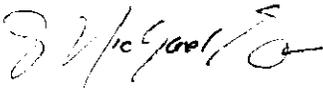
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 143700

Encl: Submitted documents

cc: Ms. Lori A. Watson  
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(w/o enclosures)