



September 21, 2001

Ms. Karen Nelson
Assistant District Attorney-
County of Dallas
Frank Crowley Courts Building
133 N. Industrial Blvd. L.B. 19
Dallas, Texas 75207-4399

OR2001-4254

Dear Ms. Nelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151638.

The Dallas County District Attorney's Office (the "district attorney") received a request for all documents or records in its possession pertaining to the arrest, investigation, and prosecution of a named individual in a specified case. You inform this office that the district attorney will release some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.132 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹

Initially, we address your representation that all of the submitted documents were promulgated in preparation for grand jury proceedings. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so that records that are 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). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the corresponding responsive information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

exception to disclosure is applicable. *Id.* Thus, to the extent that the submitted information was obtained pursuant to a grand jury subpoena or at the direction of the grand jury, the information is in the custody of the district attorney as agent of the grand jury and is not subject to disclosure under chapter 552. *Id.* at 4. This decision is not applicable to such information. To the extent, however, that the submitted information was not obtained pursuant to a grand jury subpoena or at the direction of the grand jury, the information is subject to disclosure under chapter 552 and must be released unless an exception to disclosure is demonstrated to be applicable. As we are unable to determine the extent to which the submitted information is subject to chapter 552, we address your exceptions to disclosure.

We first note that the autopsy photographs in Appendix L are subject to disclosure under law other than chapter 552 of the Government Code.² Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. You do not inform this office that the autopsy photographs in Appendix L are subject to disclosure under section 11 of article 49.25 of the Code of Criminal Procedure. Therefore, the district attorney must withhold the autopsy photographs from the requestor.

We next note that the submitted records contain information that is subject to disclosure under section 552.022 of the Government Code. Section 552.022 provides that

²As a general rule, statutes outside chapter 552 of the Government Code that expressly make certain information public prevail over exceptions to required public disclosure under chapter 552. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).*

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:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17) (emphasis added). Section 552.022(a)(17) requires the district attorney to release information that also is a matter of public court record, unless the information is expressly confidential under other law.

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 exception encompasses information that other statutes make confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted Form I-9 in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. The district attorney must withhold the marked Form I-9's and their attachments in Appendix F under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

A W-4 form is confidential under section 6103 of title 26 of the United States Code. Section 6103(a) makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). The district attorney must withhold the marked W-4 forms in Appendix F under section 6103(a) of the Internal Revenue Code.

The submitted records also contain the social security numbers of numerous individuals. A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security numbers contained in the submitted records either were obtained or are maintained by

the district attorney pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district attorney to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that these social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing a social security number to the public, the district attorney should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The disclosure of medical records is governed by the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in relevant part:

(b) 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.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b), (c). The MPA also includes provisions that govern the disclosure of information that it encompasses. *See* Occ. Code §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). We have marked documents in Appendix I that are governed by the MPA. These documents may be released only if the MPA permits the district attorney to do so.

Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002 provides in relevant part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open

Records Decision No. 565 (1990). We have marked information in Appendices I and O that is confidential under section 611.002 of the Health and Safety Code. The district attorney may release this information only as provided by sections 611.004 and 611.0045.

Chapter 773 of the Health and Safety Code governs emergency medical services ("EMS") records. Section 773.091 of the Health and Safety Code provides in relevant part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(a), (b). Section 773.091 further provides, however, that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(g). The EMS records that we have marked in Appendix J are confidential under section 773.091 of the Health and Safety Code. You have not informed us that any exception to confidentiality under the Emergency Medical Services Act, chapter 773 of the Health and Safety Code, is applicable here. *See id.* § 773.092. Therefore, except for the information specified by section 773.091(g), these EMS records are confidential under section 773.091 of the Health and Safety Code.

Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. The dissemination of CHRI obtained from the NCIC network is governed by federal law. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *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.") and (c)(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."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its

own individual law with respect to CHRI that it generates. *See* ORD 565 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 CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). Thus, any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety (the "DPS") or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code.

You assert that certain records contained in Appendix K are confidential under article 21.78 of the Insurance Code. Article 21.78 provides in relevant part:

(a) On written request to any insurer by an authorized governmental agency, the insurer or an agent authorized by an insurer to act on its behalf must release to the authorized governmental agency any relevant information that the authorized governmental agency requests and that the insurer has relating to any specific motor vehicle theft or motor vehicle insurance fraud. Relevant information includes:

(1) insurance policy information relevant to the specific motor vehicle theft or motor vehicle insurance fraud under investigation, including any application for the policy;

(2) policy premium payment records that are available;

(3) history of previous claims made by the insured; and

(4) information relating to the investigation of the motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proofs of loss, and notice of loss.

Ins. Code art. 21.78 § 2. Under article 21.78, "authorized governmental agency" includes "the prosecuting attorney of any city, town, village, judicial district, or county of the state, or of the United States or any judicial district of the United States." *Id.* § 1(1)(B). Section 2 of article 21.78 provides in relevant part:

Any information furnished as provided by this article is privileged and not a part of any public record. Except as otherwise provided by law, any authorized governmental agency, insurer, or an agent authorized by an insurer to act on its behalf that receives any information furnished as provided by this article may not release the information to the public.

Id. § 2. You indicate that Appendix K contains information that was provided to an authorized governmental agency by an insurer regarding an auto theft investigation. Based on this representation and our review of the records in Appendix K, we have marked the documents that are confidential under article 21.78 of the Insurance Code. The district attorney must also withhold these documents under section 552.101 of the Government Code.

You assert that Appendix O contains information that is confidential under section 508.313 of the Government Code. Section 508.313 provides in part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the Department of Criminal Justice] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313; *see also id.* § 508.001(9) (providing that "releasee" means "a person released on parole or to mandatory supervision"). Section 508.313 protects records held by the Texas Department of Criminal Justice ("TDCJ"). You do not inform this office that TDCJ obtained or maintains the information contained in Appendix O. We therefore conclude that this information is not confidential under section 508.313 of the Government Code.

We note, however, that the Seventy-seventh Legislature recently added sections 559.001, 559.002, and 559.003 to the Government Code, effective September 1, 2001. *See* Act of May 24, 2001, 77th Leg., R.S., H.B. 678, § 2 (to be codified as Gov't Code §§ 559.001, .002, and .003). These new statutes, enacted as chapter 559 of the Government Code by House Bill 678, provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

(1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Appendix O includes fingerprint information that is governed by these statutes. It does not appear to this office that section 559.002 permits the disclosure of this information to the requestor. The district attorney must therefore withhold this information, which we have marked, under section 559.003 of the Government Code.

Section 552.101 of the Government Code also encompasses the common law right of privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when (1) the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information concerning a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). Thus, to the extent that the district attorney maintains any responsive law enforcement records in which the individual identified by the requestor is listed as a suspect, other than the records in the case that the requestor specified, the district attorney must withhold such records in their entirety under section 552.101 in conjunction with *Reporters Committee*.

Certain kinds of personal financial information also are confidential under section 552.101 in conjunction with the common law right of privacy. In prior decisions, this office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common law privacy test, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common law privacy between confidential background financial information furnished to a public body about an individual and basic facts regarding a particular financial transaction between the individual and the public body). We note, however, that a deceased individual has no common law right of privacy, as privacy is a personal right that lapses at death. *See* Open Records Decision No. 272 at 1 (1981). We have marked personal financial information in Appendices F and K that the district attorney must withhold under section 552.101 in conjunction with common law privacy.

Common law privacy also protects the types of information about a living individual that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision No. 659 at 4-5 (1999); *see also* Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked private information in Appendices F, H, K, M, and O that the district attorney also must withhold under section 552.101.

Section 552.101 also encompasses constitutional rights of privacy. Constitutional privacy protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See* Open Records Decision No. 455 at 3-7 (1987); *see also Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See* Open Records Decision No. 455 at 6-7 (1987); *see also Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985), *reh'g denied*, 770 F.2d 1081 (1985), *cert. denied*, 474 U.S. 1062 (1986). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." Open Records Decision No. 455 at 8 (1987) (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492). We have marked

inmate visitor information in Appendices G and O that is protected by constitutional privacy. The district attorney also must withhold this information under section 552.101. See Open Records Decision No. 430 (1985) (list of inmate's visitors protected by constitutional law); cf. Open Records Decision No. 428 (1985) (list of inmate's correspondents protected by constitutional privacy).³

You also assert that Appendix N contains prosecutor information that is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) 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.

Gov't Code § 552.108(a)(4).⁴ A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You indicate that the documents in Appendix N are notes prepared by a prosecuting attorney. Based on this representation and our review of the records in question, we conclude that the district attorney may withhold these records under section 552.108(a)(4).

³You also raise section 552.102(a) of the Government Code, which excepts from disclosure "[i]nformation in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of person privacy[.]" This exception is applicable only to information contained in the personnel file of an employee of a governmental body. See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). As you do not inform this office, and it does not otherwise appear, that any of the information at issue relates to a governmental employee, we need not address section 552.102.

⁴Formerly Gov't Code § 552.108(a)(3). See Act of May 21, 2001, 77th Leg., R.S., ch. 474, § 6, 2001 Vernon's Sess. Law Serv. 864, 867 (amending Gov't Code § 552.108).

Section 552.130 of the Government Code excepts from public disclosure information that relates to

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [and]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). We have marked information relating to motor vehicle records in Appendices E, F, G, H, K, M, and O that the district attorney must withhold under section 552.130.

Section 552.132 of the Government Code is applicable to crime victim information held by the Crime Victim's Compensation Division of the Office of the Attorney General. *See* Gov't Code § 552.132(b). You do not inform this office, however, that any of the information in Appendix H is held by the Crime Victim's Compensation Division of this office.⁵ Therefore, this information is not excepted from disclosure under section 552.132. We note, however, that the district attorney must withhold some of the information in Appendix H under section 552.101 in conjunction with common law privacy and section 552.130. We have marked that information.

Lastly, we note that the Seventy-seventh Legislature also recently added section 552.136 to chapter 552 of the Government Code.⁶ This newly enacted exception to public disclosure makes certain account numbers confidential. Senate Bill 694 was passed on May 14, 2001, became effective when it was signed by the Governor on May 26, 2001, and provides in relevant part:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

⁵Nor do you inform us that any of the information in Appendix H is held by TDCJ. *See* Gov't Code § 508.313(a).

⁶The Legislature also enacted two other bills that add a section 552.136 to chapter 552. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 3, 2001, 77th Leg., R.S., ch. 143, § 1, 2001 Vernon's Texas Sess. Law Serv. 279 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code. *See* Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Vernon's Texas Sess. Law Serv. 614 (to be codified at Gov't Code § 552.137).

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). We have marked information in Appendix F that the district attorney must withhold under section 552.136 of the Government Code.

In summary, any information that was obtained pursuant to a grand jury subpoena or at the direction of the grand jury is in the custody of the district attorney as agent of the grand jury and is not subject to disclosure under chapter 552 of the Government Code. The autopsy photographs must be withheld under section 11 of article 49.25 of the Code of Criminal Procedure. The submitted records include information that is confidential under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; section 6103 of title 26 of the United States Code; sections 611.002 and 773.091 of the Health and Safety Code; article 21.78 of the Insurance Code; and newly-enacted section 559.003 of the Government Code. A social security number may be confidential under federal law. The disclosure of medical records is governed by the Medical Practice Act. Criminal history record information obtained from the Department of Public Safety or another criminal justice agency is confidential under federal law and subchapter F of chapter 411 of the Government Code. The submitted records also contain information that the district attorney must withhold under section 552.101 in conjunction with common law and constitutional rights of privacy. The prosecutor's notes are excepted from disclosure under section 552.108. Information relating to motor vehicle records must be withheld under section 552.130. Access device information must be withheld under newly-enacted section 552.136. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 151638

Enc: Marked documents

c: Mr. Michael S. Francis
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