



April 12, 2002

Ms. Ann-Marie P. Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2002-1835

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161174.

The Travis County District Attorney's Office (the "district attorney") received a request for the following categories of information:

1. Name of police officers who sent over the case to be presented to Grand Jury and when and what follow up inquiries were made of these officers.
2. What additional information was sent after the first information was sent and by whom.
3. Certified copies of all witness statements.
4. Certified copies of offense and supplement reports.
5. Copy of the victim's employment files.
6. Copy of all 911 audio and video tapes.
7. A certified copy of the presentation to the Travis County Grand Jury.

You state that the district attorney does not have information responsive to categories one, five, and seven of the request, as well as any video tapes requested in category six. We note that the Public Information Act does not require the district attorney to disclose information responsive to categories one, five, part of six, and seven of the request because, according

to the district attorney, this information did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). In regard to category two of the request, you state that there is no specific record regarding additional information sent after the first information other than what is in the district attorney's file. You claim that portions of this file will be released to the requestor. You also state that the district attorney will be releasing court-filed records and other law enforcement records in the file as well as a copy of the 911 audio tape responsive to category six of the request. Finally, you claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by the common-law right of privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. 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 Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, Tab A of the submitted information contains criminal history record information of individuals involved in the underlying case. In this case, we believe that the individuals' right to privacy has been implicated. We have marked the criminal history information that must be withheld under section 552.101 and *Reporters Committee*.

Furthermore, criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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. 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 Gov't Code § 411.083.

¹We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 CHRI 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 CHRI 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. We have marked the information submitted for our review in Tab A that is CHRI generated by TCIC and NCIC. Accordingly, this information is excepted from required public disclosure by section 552.101 of the Government Code.

You claim that the remainder of the information in Tab A is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 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.

(b) [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 is excepted from the requirements of 552.021 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.

(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.

Gov't Code § 552.108(a)(4), (b)(3), (c). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 applies to that information. *See Gov't Code § 552.301(e)(1)(A); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986)*. When a governmental body asserts that the information reflects the prosecutor's mental impressions or legal reasoning, we strongly encourage the governmental body, in its request for a ruling, to explain how the information does so.

You state that the district attorney obtained or prepared the remaining information in Tab A in the course of preparing for criminal prosecution of the case. Upon careful review of your representations and the information in Tab A, we conclude that the information was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude that the remaining information in Tab A is attorney work product that may be withheld from disclosure under section 552.108.

In Tab B, you assert that the highlighted identifying information of witnesses and their statements are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” After reviewing your arguments and the submitted information, we conclude you have not sufficiently demonstrated how release of the identifying information of witnesses and their statements would “interfere with the detection, investigation, or prosecution of crime.” Accordingly, you may not withhold the identifying information of witnesses and their statements under section 552.108 of the Government Code.

Next, you state that highlighted portions of the submitted records in Tab B include information that must be withheld under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

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

Therefore, the district attorney must withhold Texas driver’s license information contained in the report under section 552.130. We have marked the submitted information accordingly.

Although Texas driver’s license numbers and license plate numbers are normally confidential under section 552.130, we note that under section 552.023 of the Government Code a person or a person’s authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests. Therefore, the requestor has a special right of access to his Texas driver’s license number and license plate number and the district attorney may not withhold this information in this instance.

In summary, we conclude that you must withhold the criminal history record information we have marked in Tab A of individuals involved in the underlying case under common-law privacy as encompassed by section 552.101 of the Government Code as well as CHRI generated by TCIC and NCIC. The remaining information in Tab A is attorney work product that may be withheld from disclosure under section 552.108 of the Government Code. The Texas driver's license information we have marked in Tab B must be withheld from disclosure pursuant to section 552.130 of the Government Code. All other 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 161174

Enc: Submitted documents

c: Mr. Robert E. Simmons
1004 New Port Avenue
Austin, Texas 78753
(w/o enclosures)