



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 12, 2003

Mr. Jaime Esparza  
District Attorney  
Thirty-Fourth Judicial District  
500 East San Antonio #201  
El Paso, Texas 79901

OR2003-1647

Dear Mr. Esparza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179936.

The 34<sup>th</sup> Judicial District Attorney's Office received a request for information relating to a specific file. You indicate that most of the responsive information has been released. You claim, however, that the submitted information, exhibits 6 and 7, are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you claim that exhibit 6 is attorney work product that is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in relevant part as follows:

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

You state that the notes in exhibit 6 were prepared by an attorney in the course of preparing for criminal litigation and indicate her mental impressions and legal reasoning for

dismissing this case. Based on your representations and our review of the document, we agree that the information constitutes attorney work product that may be withheld under section 552.108(a)(4).

Next you claim that the criminal history record information (“CHRI”) contained in exhibit 7 is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” Access to CHRI obtained from the National Crime Information Center (“NCIC”) is governed and restricted by federal law. *See* 28 C.F.R. § 20.1, *et seq.*; Open Records Decision No. 565 at 10-12 (1990). The relevant federal regulations permit each state to follow its own applicable law with respect to the CHRI that it generates. ORD 565 at 11-12. Sections 411.083 and 411.089 of the Government Code authorize a criminal justice agency to obtain CHRI from the Texas Crime Information Center (“TCIC”). However, CHRI obtained from the TCIC network may be released by a criminal justice agency only to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Thus, CHRI generated by the federal government or another state may be obtained only in accordance with the relevant federal regulations, and CHRI obtained from the Texas Department of Public Safety or another Texas criminal justice agency through the TCIC must be withheld in accordance with subchapter F of chapter 411 of the Government Code. We note, however, that the Texas Department of Public Safety must grant the person who is the subject of the CHRI access to the CHRI. Gov’t Code § 411.083(b)(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

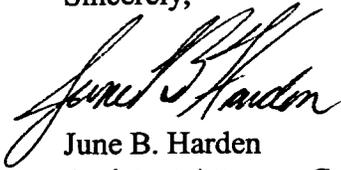
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 Dep't of Pub. 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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 179936

Enc: Submitted documents

c: Mr. Sam Snoddy  
Attorney at Law  
1518 Montana  
El Paso, Texas 79902  
(w/o enclosures)