



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2009

Ms. Christina R. Sanchez
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-03464

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 338269.

The 34th Judicial District Attorney's Office (the "district attorney") received a request for information related to a specific case. You state that the district attorney will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code 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 [and]

Gov't Code § 552.108(a)(4). You inform us that Attachment C consists of a document prepared by an attorney representing the state in anticipation of and in preparation for criminal litigation after the case underlying this request was presented to his office for prosecution. Based on your representations and our review, we conclude that the district attorney may withhold the portion of the submitted information for which you have asserted section 552.108(a)(4) of the Government Code.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 411.083 of the Government Code, which provides that criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"), is confidential.² Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or from 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. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas 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. 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. *See 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 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we agree that the information contained within Attachment D constitutes confidential CHRI. Accordingly, the district attorney must withhold this information under section 552.101 in conjunction with section 411.083.³

You also raise section 552.101 in conjunction with article 20.02 of the Texas Code of Criminal Procedure, which provides in part that "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). You indicate that the information for which you

¹As our ruling is dispositive with regard to this portion of the submitted information, we need not address your remaining arguments against disclosure of this information.

²Although you raise section 552.101 in conjunction with sections 411.084 and 411.085 of the Government Code, based on your arguments we understand you to raise section 552.101 in conjunction with section 411.083, as this is the proper section for the substance of your arguments.

³We note that an individual can obtain his or her own CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

have raised this exception was compiled by the district attorney during the course of a criminal investigation and presented to a grand jury. Upon review, we conclude that this information consists of grand jury testimony given via affidavit and is part of the record of the grand jury proceeding. *See Stern v. State*, 869 S.W.2d 614 at 621 (Tex. App. – Houston [14th Dist.] 1994, writ denied); *see also* Open Records Decision No. 398 (1983). Therefore, this information is confidential under article 20.02(a) of the Texas Code of Criminal Procedure and the district attorney must withhold this information under section 552.101 of the Government Code.

In summary, the district attorney: (1) may withhold the information we have marked under section 552.108 of the Government Code, (2) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, and (3) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with article 20.02(a) of the Texas Code of Criminal Procedure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 338269

Enc. Submitted documents

cc: Requestor
(w/o enclosures)