



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 25, 1995

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
County Courthouse
P.O. Box 1748
Austin, Texas 78767

OR95-215

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30925.

The Travis County District Attorney's Office received an open records request from an attorney for the police offense report concerning the aggravated assault of the requestor's client and the report of the presentence investigation that was conducted on the criminal defendant.¹ You first contend that the presentence investigation report for the criminal defendant must be withheld from the public pursuant to section 552.101 of the Government Code. We agree. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 9(j) of article 42.12 of the Code of Criminal Procedure governs the release of presentence investigation reports and related documents to the public and provides in pertinent part:

The judge by order may direct that any information and records that are not privileged and that are relevant to the report required by Subsection (a) of this section be released to the officer conducting the presentence investigation The report and all information obtained in connection with the presentence investigation are

¹Because the requestor seeks only these two documents, we need not address whether your office must release the contents of "Exhibit A," which do not come within the ambit of the request.

confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), and (g) of this section and as directed by the judge for the effective supervision of the defendant. . . .

The circumstances listed in subsections (d) through (g) of section 9 do not appear to be applicable here. Accordingly, you may not release this document to the requestor.

You also contend, *inter alia*, that the requested police offense report constitutes work product that is protected from required public disclosure by section 552.111 of the Government Code. The work product doctrine applies only upon a showing of the applicability of section 552.103(a) of the Government Code. See Open Records Decision No. 575 (1990). You do not argue that section 552.103(a) applies in this instance.

We note, however, that the issues you raise with respect to work product are the subject of pending litigation in *Holmes v. Morales*, Cause No. 93-07978, 261st Judicial District, Travis County. The plaintiff in this litigation has filed an appeal of the district court ruling to the Third Court of Appeals. In light of the pendency of this litigation, it would be inappropriate for this office to rule on the claims you raise regarding work product. At this point, it appears that the outcome of the *Holmes* case may determine the resolution of your claims and may moot any decision this office might reach on those claims. For these reasons, we are declining to rule on the issues you raised regarding work product, and you may withhold the information that is arguably work product pending the outcome of the *Holmes* case. For your convenience, we have marked the information that is obviously not work product. This information is also not protected by either section 552.101 or section 552.108 and must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/RWP/rho

Ref.: ID# 30925

Enclosures: Submitted documents

cc: Mr. Kevin R. Madison
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(w/o enclosures)