



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Mr. Kenneth R. Yarbrough
Chief of Police
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR95-782

Dear Chief Yarbrough:

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# 30114.

The City of Richardson received a request for all records, memoranda, and writings of any kind surrounding the stop, detention, arrest, booking, and charging of a particular individual on September 16, 1994, or thereafter. You state that the accused has filed a motion under the provisions of article 27.14(b) of the Code of Criminal Procedure to enter a plea of nolo contendere for the purpose of perfecting an appeal. You have submitted the requested information for our review.

According to your brief to this office, a portion of the submitted documents, Exhibit 3, consists of documents held by the municipal court as of the date of the request. Though you raise sections 552.103 and 552.108 as excepting the information from required disclosure, the Open Records Act neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed. Open Records Decision No. 25 (1974). Nonetheless, other requirements may make the information available to the public. See Open Records Decision No. 274 (1981) (holding that municipal courts are not subject to Open Records Act, but traffic citations held by municipal court were nevertheless public information under other laws giving municipal court clerks same duties as county clerks).¹

¹The municipal court records, Exhibit 3, contain criminal history record information ("CHRI"). CHRI information obtained from the Texas Crime Information Center ("TCIC") and subsequently placed in court records does not appear to be excepted from disclosure under state guidelines. See Gov't Code § 411.081(a)(4). However, Federal regulations prohibit the release of CHRI obtained from the National

Exhibit 2 contains the police department file as of the date of the request. You assert that this information is excepted under sections 552.103 and 552.108. Section 552.103(a) excepts from disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Information must relate to litigation that is pending or reasonably anticipated to be excepted under section 552.103(a). *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

Section 552.103(b) provides that

For purposes of [section 552.103], the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

Section 552.103(b) is not a separate exception to disclosure; it provides a time frame for the section 552.103(a) exception. Open Records Decision No. 518 (1989) at 5. Unless a governmental body has met its burden of showing that litigation is pending or reasonably anticipated under section 552.103(a), section 552.103(b) will not apply. Additionally, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor under section 552.103(a).

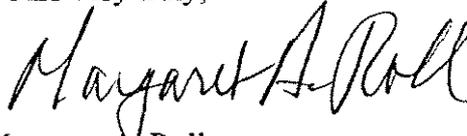
(Footnote continued)

Crime Information Center Interstate Identification Index ("NCIC") which contains information obtained from federal and multi-state sources. 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."), (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."). Accordingly, pursuant to state law and federal regulations, the department may release the submitted CHRI only as permitted by the above referenced statutes.

In this case, you have made the requisite showing that litigation is anticipated, because the defendant has notified the court that he intends to appeal. Thus, under section 552.103, you may withhold information related to the litigation to which the opposing parties have not previously had access. Open Records Decision Nos. 349 (1982), 320 (1982). However, the applicability of section 552.103(a) ends once litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

As you may withhold the information under section 552.103, we need not address your argument that the information is excepted from disclosure under section 552.108. 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/LMM/rho

Ref.: ID# 30114

Enclosures: Submitted documents

cc: Mr. Paul D. Rich
Rich & Alonzo, P.C.
Oak Cliff Banking Center
400 South Zang Boulevard, Suite 804
Dallas, Texas 75208
(w/o enclosures)

²Exhibit 2 contains CHRI information. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. 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."), (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."). In addition, section 411.097(c) of the Government Code prohibits the department from disclosing any CHRI obtained from the Department of Public Safety ("DPS") or any other criminal justice agency. See also Gov't Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Accordingly, pursuant to state law and federal regulations, the department may release the submitted CHRI only as permitted by the above referenced statutes.