Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 12, 1996

Ms. Gail Kikawa McConnell
Assistant District Attorney
Montgomery County District Attorney's Office
301 N. Thompson, Suite 106
Conroe, Texas 77301-2824

OR96-0172

Dear Ms. McConnell:

You have asked this office to determine if certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38111.

The Montgomery County District Attorney's Office (the "district attorney") received a request for documents related to a charge of aggravated assault. From the information, it appears that the charge was dismissed. You state that the district attorney has provided all of the requested documents except for medical records, grand jury records, documents that are excepted from disclosure under section 552.107 or the informer's privilege aspect of section 552.101, and documents containing criminal history record information generated by the Texas Crime Information Center or the National Crime Information Center. You submitted representative documents labeled as exhibit numbers 1 through 6.[1]

You assert that the documents in exhibit number 1 are excepted from disclosure under section 552.107. Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. Open Records Decision No. 574 (1990) at 5. The first document contains handwritten attorney notes that reflect the attorney's legal advice or opinion. The notes may be withheld from disclosure pursuant to section 552.107(1). The other document at issue is a letter to a third party that is not

[1]We 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 No. 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.

within the scope of the section 552.107 attorney-client privilege. The letter thus may not be excepted from disclosure pursuant to section 552.107(1).

Information obtained from witnesses and the complainant was submitted as exhibit number 2. You assert that this information is excepted from disclosure pursuant to the informer's privilege aspect of section 552.101. For information to come under the protection of the informer's privilege, the information reported by an informant must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 (1988) at 2-5, 391 (1983). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision Nos. 549 (1990) at 5, 202 (1978) at 2 (informer's privilege exception is not applicable when identity of informer is known to subject of communication). In *Rovario v. United States*, 353 U.S. 53 (1957), the United States Supreme Court stated:

> What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the *identity of persons who furnish information of violations of law* to officers charged with enforcement of that law. . . .

353 U.S. at 59 (emphasis added).

The statements appear to be from witnesses rather than informants. Thus, the statements at issue may not be withheld from disclosure.

You assert that the documents in exhibit 3 are records of the judiciary and thus are not subject to disclosure under chapter 552. *See* Gov't Code 552.003(B) (judiciary is not governmental body subject to chapter 552). In Open Records Decision No. 513 (1988), this office concluded that grand juries are not subject to chapter 552 and that records within the constructive possession of grand juries are not public information subject to disclosure under chapter 552. *See* Gov't Code § 552.002. You indicate that the information at issue was submitted to the grand jury for review. For the district attorney to withhold such information, the district attorney must have obtained the information pursuant to a grand jury subpoena issued in connection with a grand jury investigation. Open Records Decision No. 513 (1988). Thus, the documents in possession of the district attorney that were obtained pursuant to a grand jury subpoena may be withheld from disclosure. The other investigation documents at issue are not excepted from disclosure, with the exception of criminal history information. We note that exhibits 3, 5, and 6 each contain criminal history information.

Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information 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 criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government

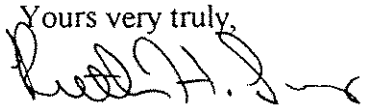
Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of criminal history information obtained from DPS also apply to criminal history information obtained from other criminal justice agencies).

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain criminal history information from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information 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 criminal history record information 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. Thus, the criminal history information in exhibits 3, 5, and 6 must be withheld from disclosure. The other information at issue must be disclosed.

You contend that exhibit 4 is a confidential medical record. Access to medical records is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. However, section 5.08(h)(4) of the MPA provides that the portions of medical records "reflecting charges and specific services rendered" by a physician are not confidential. Exhibit 4 is not a confidential medical record. We note that if the district attorney has medical records, they are confidential and may not be disclosed except as provided by the MPA.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 38111

Enclosures: Marked documents

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(w/o enclosures)