



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 22, 1997

Ms. Joni M. Vollman  
Assistant General Counsel  
Office of the Harris County District Attorney  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR97-2350

Dear Ms. Vollman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Texas Open Records Act. Your request was assigned ID# 109476.

The Office of the Harris County District Attorney (the "district attorney") received a request for all of the district attorney's records and documents pertaining to its criminal investigation and prosecution of William Gene Brent. You submitted to this office for review a representative sample of documents responsive to the request.<sup>1</sup> You assert that some of the information at issue is made confidential by section 552.117 of the Government Code, and by other statutes in conjunction with section 552.101 of the Government Code. You also assert that specific documents are "work product" and excepted from disclosure pursuant to section 552.108(a)(3) of the Government Code.

We note initially that some of the submitted documents are public and must therefore be released. Documents filed with a court are generally considered to be public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); *see also* Open Records Decision No. 287 (1981). We also note that it is our understanding that you asserted section 552.108(a)(3) only for specific documents rather than for all of the documents submitted. We will address your arguments against disclosure.

Section 552.101 protects from disclosure information made confidential pursuant to law, including other statutes. We have reviewed the samples submitted to this office for review and agree that some of the documents are made confidential by section 552.101, in conjunction with other

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<sup>1</sup>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.

statutes. The submitted information contains criminal history information ("CHRI") that is confidential.

Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which 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 CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI 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 CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). 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 the information except to another criminal justice agency for a criminal justice purpose, *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 the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI 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). Further, CHRI obtained from DPS or any other Texas criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

You assert that some of the submitted information concerns a complaint made against police officers that is confidential pursuant to section 143.1214 of the Local Government Code. Section 143.1214(b) provides that a police department maintain an internal file with documents concerning misconduct allegations against police officers, when the department did not sustain those allegations. Section 143.1214(b) also provides that such information may not be released "to any agency or other person except another law enforcement agency or fire department." Assuming that section 143.1214(b) is applicable to these documents, we agree that they are confidential.

You assert that the pre-sentence investigation report submitted to this office is confidential under section 9(j), article 42.12 of the Code of Criminal Procedure. Section 9(j) provides that a pre-sentence investigation report and "all information obtained in connection" with the report is confidential and may be released in certain situations only. Section 9(j) further provides that: "Medical and psychiatric records obtained by court order shall be kept separate from the defendant's community supervision file and may be released only by order of the judge." We agree that the pre-sentence report is confidential.

You do not indicate if the submitted medical report was obtained in connection with the pre-sentence investigation report and thus also is subject to section 9(j). If the medical report is subject to the provisions of article 42.12 of the Code of Criminal Procedure, it also is confidential. Release of the medical report otherwise is governed by section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), which provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 (1990) at 7. Thus, if article 42.12 of the Code of Criminal Procedure does not govern access to the medical records, access to the records is governed by these provisions of the MPA. Open Records Decision No. 598 (1991).

You also assert that various documents at issue, including the victim impact statement, are confidential pursuant to section 18(a) of article 42.18 of the Code of Criminal Procedure. Section 18(a) provides:

Except as provided by Subsection (b), all information, including victim protest letters or other correspondence, victim impact statements, lists of inmates eligible for release on parole, and arrest records of inmates, obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any plan of release for a prisoner, is confidential and privileged.

It is not apparent to this office that any of the submitted information was obtained and maintained pursuant to the provisions of section 18(a). However, to the extent that the submitted records are made confidential by this provision, they must be withheld from disclosure.

You assert that section 552.117 of the Government Code excepts from disclosure any of the information at issue that contains the home telephone numbers and pager numbers of peace officers. Section 552.117 provides for the confidentiality of the home addresses, home telephone numbers, and social security numbers of peace officers. Section 552.117 also protects from disclosure information that reveals that the individual has family members. We thus agree that responsive information which contains home telephone numbers of peace officers must be protected from disclosure. In Open Records Decision Number 506 (1988) at 5, this office stated that one purpose of section 552.117 is to protect public officials and employees from being harassed while at home. We agree that pager numbers of peace officers may be withheld from disclosure.

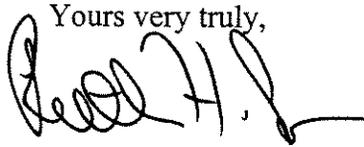
Section 552.108(a)(3) provides that information is excepted from public disclosure under the Open Records Act if it is information that is either (1) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (2) if it is information that

reflects the mental impressions or legal reasoning of an attorney representing the state.<sup>2</sup> In correspondence to this office, you specifically asserted this exception for information "including handwritten notes of prosecutors, jury questionnaires and notations thereupon reflecting the prosecutor's thought processes in jury selection, investigator notes and summaries and the capital murder summary prepared by a prosecutor at the time of charging." We note that you did not submit to this office samples of all of the above-listed items. However, you did submit handwritten notes and other documents that we agree may be withheld from disclosure pursuant to section 552.108(a)(3).

We also note that section 552.108(c) provides that basic information about an offense may not be withheld from disclosure under section 552.108. Front page offense and arrest report information, which are generally public, constitute this type of basic information about the offense and thus must be disclosed. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

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 any questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 109476

Enclosures: Submitted documents

cc: Mr. Michael B. Charlton  
4515 Yoakum  
Houston, Texas 77006  
(w/o enclosures)

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<sup>2</sup>We note that the Seventy-Fifth Legislature amended section 552.108. See Act of June 1, 1997, H.B. 951, § 1, 75<sup>th</sup> Leg., R.S. (to be codified at Gov't Code § 552.108).