



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 23, 1997

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

OR97-2360

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109521.

The Harris County District Attorney's Office received a request for information relating to *State of Texas v. Robert Smith*. You have provided some of this information to the requestor. You have submitted representative samples of the remaining information to this office for review.¹ You contend that the remaining information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.117 of the Government Code.

The information at issue includes criminal history information. You contend that the criminal history information is excepted from disclosure under section 552.101 of the Government Code. We agree. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history information obtained from the National Crime Information Center or the Texas Crime Information Center is generally confidential by law. 28 C.F.R. § 20; Gov't Code § 411.083. Criminal history information that has been compiled by a governmental entity is protected by the common-law right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Therefore, you must withhold criminal history information from disclosure under section 552.101 of the Government Code as information deemed confidential by law.

¹We 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 Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(3) 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;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. The information you seek to withhold under section 552.108 consists of prosecutor's and investigator's notes and jury questionnaires.² You assert that this information reflects the prosecutor's thought processes and that releasing this information would "interfere with future trial strategy." Having considered your arguments and reviewed the information at issue under section 552.108, we conclude that you may withhold this information from disclosure under section 552.108(a)(3). It appears that you have already disclosed basic information about the crime as required by section 552.108(c). *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).

You also claim that some of the information at issue is excepted from disclosure pursuant to sections 552.107 and 552.117 of the Government Code. Because we have determined that you may withhold this information from disclosure under section 552.108(a)(3), we need not address your other arguments against disclosure.

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

²We note that certain jury questionnaire information may be released only in accordance with article 35.29 of the Code of Criminal Procedure.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 109521

Enclosures: Submitted documents

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(w/o enclosures)

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