



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 1, 1997

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

OR97-2616

Dear Ms. Vollman:

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# 112293.

The Harris County District Attorney's Office (the "district attorney") received a request for information pertaining to an individual and certain specified cases. You state that "certain documents will be disclosed to the requestor." You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of documents.¹

Section 552.108 of the Government Code provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] 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; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

¹In reaching our conclusion here, 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 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.

You specifically quote the pertinent language from the provision cited above in arguing that the records in Exhibit "A" constitute the "work product" of the prosecutors for the district attorney. We have reviewed the documents in Exhibit "A." We find that these records deal with the prosecution of crime and reflect the mental impressions or legal reasoning of an attorney representing the state. See Gov't Code § 552.108(a)(3)(B). You may, therefore, withhold from disclosure the documents contained in Exhibit "A" under section 552.108. We assume that you have released "front page" information in accordance with *Houston Chronicle*.² If not, you must release basic information from the D.A. Intake Management System sheets.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. You claim that the records submitted in Exhibit "B" are made confidential by state and federal law. Federal regulations prohibit the release of criminal history report information ("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."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; see also *id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, to the extent that Exhibit "B" contains CHRI obtained from DPS or another criminal justice agency, you must not release such information to the requestor.

You also assert that Exhibits "C" and "D" contain documents that 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.

²*Houston Chronicle Publ'g 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).

It is not apparent that any of the submitted information in Exhibits "C" and "D" was obtained and maintained pursuant to the provisions of section 18(a). This provision accords confidentiality to the records of the Texas Board of Criminal Justice. *See* Open Records Decision Nos. 190 (1978) at 2 (provision makes confidential files of the Board of Pardons and Paroles) (construing predecessor statute), 33 (1974). Section 18(a) does not make records in the custody of the district attorney confidential. We therefore conclude that the district attorney may not withhold the information contained in Exhibits "C" and "D" based on section 552.101 of the Government Code in conjunction with section 18(a) of article 42.18 of the Code of Criminal Procedure.

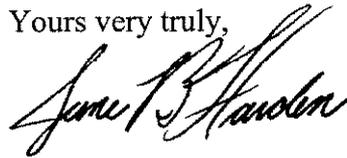
Finally, you assert that section 9(j) of article 42.12 of the Code of Criminal Procedure makes confidential the documents in Exhibit "E." Section 9(j) provides, in pertinent part:

A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section and as directed by the judge for the effective supervision of the defendant.

It does not appear that any of the exceptions to release of the documents contained in Exhibit "E" are applicable in this instance. We therefore conclude that the district attorney must withhold from disclosure the records submitted in Exhibit "E."

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 112293

Enclosures: Submitted documents

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(w/o enclosures)