



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 22, 1998

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

OR98-1018

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# 115292.

The Harris County District Attorney (the "district attorney") received a request for "the State's file in State v. Rodney Burton, Cause Number 602417." You state that the district attorney has disclosed certain documents in the file to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the representative sample documents you have submitted.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.

You next contend the documents you submitted to this office as Exhibit "B" are excepted from public disclosure pursuant to section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Exhibit "B" consists of criminal history record information ("CHRI"). We agree that the district attorney must withhold, pursuant to statutory law, all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). 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. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The district attorney therefore must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code.²

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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

²As we resolve this matter under sections 552.101 and 552.108, we need not address your claimed exception under section 552.103.

VDP/alg

Ref.: ID# 115292

Enclosures: Submitted documents

cc: Ms. Trude Scott
Attorney at Law
405 Main Street
Houston, Texas 77002
(w/o enclosures)