



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 4, 1998

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

OR98-1129

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114916.

The Harris County District Attorney's Office (the "district attorney") received a request for "the State's file in State v. Randall Paige Henson (cause number 316484)." You state that you have released some of the requested information including the front page offense report information. You have submitted a representative sample of the remaining documents to this office for review. You contend that these documents, labeled Exhibits A through F, are excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the documents at issue.

You first contend that the documents in Exhibit A constitute "work product" and are excepted from public disclosure pursuant to section 552.108(a)(3) of the Government Code. 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 (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) if it is information that reflects the mental impressions or legal reasoning of an attorney representing the state. Exhibit A includes the handwritten and typed notes of prosecutors and their investigators, the cover folders of the prosecutor's files, the Harris County central intake sheet, and other similar documents. We conclude

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.

that the district attorney may withhold the documents in Exhibit A from disclosure pursuant to section 552.108(a)(3).²

Exhibit B consists of criminal history record information ("CHRI"). Section 552.101 of the *Government Code* excepts from disclosure information made confidential by law, either constitutional, statutory, or by judicial decision. CHRI 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. CHRI 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 from disclosure under section 552.101 of the *Government Code* as information deemed confidential by law.

Exhibit C is a medical record. The release of medical records 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. Exhibit C may be released only in accordance with these provisions of the MPA. Open Records Decision No. 598 (1991).

Exhibit D consists of juror information cards. Article 35.29 of the Code of Criminal Procedure provides as follows:

Information collected by the court or by a prosecuting attorney during the jury selection process *about a person who serves as a juror*,

²You indicate that some of the documents in Exhibit A have been released without the prosecutor's notations on them. We, therefore, assume that you have already released copies of the underlying court documents in Exhibit A. Nevertheless, we note that documents filed with a court are generally considered public and must be released. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); Attorney General Opinion DM-166 (1992).

including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court *in which the person is serving or did serve as a juror*. On a showing of good cause, the court shall permit disclosure of the information sought. [Emphasis added].

Article 35.29 makes confidential certain personal information pertaining to only those individuals who actually served on the petit jury in a criminal trial. We have marked a representative sample of the categories of information the district attorney must withhold in compliance with the language and intent of the statute. *The district attorney may not withhold any additional information contained in Exhibit D pursuant to article 35.29.*

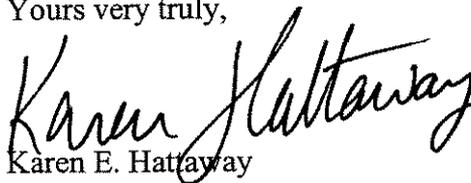
Exhibit E is a sexual assault victim's statement. Portions of this statement are excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy. The doctrine of common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim's identity is protected by the common-law right to privacy. We have marked the identifying information in Exhibit E that the district attorney must withhold from disclosure, unless this information is otherwise contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common-law privacy). *See also Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995).

Finally, you contend that the peace officer's pager number in Exhibit F is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(2) provides for the confidentiality of the home addresses, home telephone numbers, and social security numbers of peace officers, as well as information that reveals whether the peace officer has family members. In Open Records Decision Number 506 (1988), this office stated that one purpose of section 552.117 is to protect public officials and employees from being harassed while at home. *Id.* at 5. Based on this rationale, we conclude that the peace officer's pager number must be withheld from disclosure.³

³We assume for purposes of granting section 552.117 that the pager was purchased and is privately owned by the peace officer. *See* Open Records Decision No. 506 (1988) at 5-6 (statutory predecessor to section 552.117 does not apply to cellular mobile phone numbers paid for by county and intended for use at work for county business; different considerations apply if employee pays for purchase and installation of and calls to and from mobile phone in his private vehicle and simply seeks reimbursement for calls made on county business). We also assume that the pager number is not contained in public court records.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 114915

Enclosures: Submitted documents

cc: Ms. Cynthia Russell Henley
Schaffer & Henley
1301 McKinney, Suite 3100
Houston, Texas 77002
(w/o enclosures)