



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 15, 1998

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

OR98-2194

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# 118128.

The Harris County District Attorney's Office (the "district attorney") received a request for information pertaining to a specific individual. You state that certain files have been destroyed pursuant to the district attorney's records retention policies. You state that certain documents, including basic information, will be disclosed to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of documents.<sup>1</sup>

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

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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 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.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Additionally, section 552.103(b) provides that the state or a political subdivision is considered to be a party to litigation of a criminal nature until the defendant has exhausted all post-conviction remedies in state and federal court.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Therefore, the governmental body must meet both prongs of this test for information to be excepted under 552.103(a). It appears from the submitted information that the defendant has filed a Motion for Leave to File Petition For Writ of Habeas Corpus. We conclude that you have shown that litigation is reasonably anticipated and that the requested information relates to the anticipated litigation.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, the requestor argues that since the requested information was previously examined by the defendant's former counsel, the district attorney has waived its exceptions against disclosure.<sup>2</sup> You have submitted an affidavit from the prosecutor who states that although he permitted access to the state's file, he did not permit inspection of his work product. Therefore, we conclude that the documents in Exhibit A may be withheld from disclosure. We note, however, that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>3</sup>

We also note that federal regulations prohibit the release of criminal history record 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."),

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<sup>2</sup>The requestor also argues that the district attorney did not seek a ruling from this office within the statutory time period. See Gov't Code § 552.301(a). We note that the district attorneys's request was postmarked on the tenth business day, June 25, 1998. Consequently, the district attorney's request for a ruling was timely. See Gov't Code § 552.308.

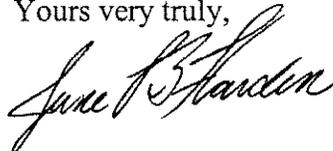
<sup>3</sup>As we resolve this matter under section 552.103, we need not address the other exceptions you have raised. We caution, however, that some of the information may be confidential by law. Therefore, if the district attorney receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the district attorney should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

(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, the district attorney must not release the contents of Exhibit C to the requestor.

Finally, we note that some of the submitted information is confidential under section 552.117. Section 552.117 of the Government Code provides that information is excepted from disclosure if it relates to a peace officer’s home address, home telephone number, social security number, or reveals whether the peace officer has family members. *Cf.* Open Records Decision Nos. 622 (1994) (section 552.117 excepts from disclosure former home addresses and former home telephone numbers), 455 (1987). Thus, you must withhold this information as contained within the submitted documents.

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/ch

Ref.: ID# 118128

Enclosures: Submitted documents

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(w/enclosures)