



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1998

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

OR98-3247

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 # 121434.

The Harris County District Attorney's Office received a request for a copy of an individual's file from his attorney. The individual was involved in criminal cause number 76-5304. You state that certain documents will be disclosed to the requester. You submit to this office a representative sample¹ of the remaining requested information as Exhibits A through F, and you assert that the remaining requested information is exempt from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

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) (where requested documents are numerous and repetitive, governmental body should submit a representative sample; but if each record contains substantially different information, all must be submitted). 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 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. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov’t Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that Exhibit A constitutes the work product of the prosecutors for the Harris County District Attorney’s Office, including handwritten and typed notes of prosecutors and their investigators, the central intake screening report, the cover folder of the prosecutor’s file, and the Harris County District Attorney Criminal History and Research Information Sheets. After examining Exhibit A, it appears that the handwritten notes and documents were prepared by an attorney in the course of preparing for criminal litigation. We conclude that the district attorney may withhold the documents in Exhibit A from disclosure pursuant to section 552.108(a)(3).

You indicate that certain documents will be released. We assume that you are releasing all of the “basic information about an arrested person, an arrest, or a crime” that must be disclosed pursuant to Gov’t Code § 552.108(c). We also assume that you are releasing documents filed with a court. They 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).

You argue that the materials in Exhibits B, C, D, and E must be withheld under section 552.101. Section 552.101 of the Government Code excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes.

Exhibits B and F consist 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 Exhibits B and F from disclosure under section 552.101 of the Government Code as information deemed confidential by law.

Exhibit C consists of documents presented to, subpoenas issued by and testimony given before the grand jury. You contend that these documents are confidential by law. Article 20.02(a) of the Code of Criminal Procedure states that “[t]he proceedings of the grand

jury shall be secret.” Thus, information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and excepted from disclosure under section 552.101 of the Government Code. Additionally, in Open Records Decision No. 513 (1988), this office concluded that grand juries are not subject to the Open Records Act, and that records within the constructive possession of grand juries are not public information subject to disclosure under the Open Records Act. *See* Gov’t Code § 552.003. Based upon these considerations, we conclude that the district attorney must withhold Exhibit C from disclosure.

Exhibit D consists of medical records. 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 at 7 (1990). Exhibit D may be released only in accordance with these provisions of the MPA. Open Records Decision No. 598 (1991).

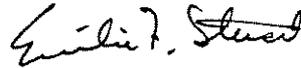
Exhibit E contains the home address, telephone number, beeper number, and emergency notification information of the investigating police officer. Section 552.117(2) provides for the confidentiality of the home addresses, home telephone numbers, and social security numbers of peace officers, as well as information that reveals whether the peace officer has family members. You must withhold from disclosure the information that we have marked in Exhibit E.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

²We assume for purposes of granting section 552.117 that the pagers were purchased and are privately owned by the peace officers. *See* Open Records Decision No. 506 at 5-6 (1988) (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).

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 questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 121434

Enclosures: Submitted documents

cc: Mr. Alfred D. Jenkins, III
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(w/o enclosures)