

February 2, 1999

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

OR99-0299

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# 121930.

The Harris County District Attorney's Office (the "DA's office") received a request for information relating to an individual's file held by the DA's office. You have submitted a representative sample of the responsive information.<sup>1</sup> You have released or will release some of the information, but you contend that other information must be withheld from public disclosure pursuant to sections 552.108 and 552.101 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

You first argue that the information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 reads in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the

---

<sup>1</sup> In 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.



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

— \* —

JOHN CORNYN  
Attorney General

— \* —

P.O. Box 12548  
Austin, Texas  
78711-2548

(512) 463-2100  
www.oag.state.tx.us

detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

• • •

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You have informed us that all of the records at issue pertain to a criminal case that was dismissed. We conclude that since the requested information deals with the prosecution of a crime only in relation to an investigation that did not result in conviction or deferred adjudication, we conclude that you have met your burden. You therefore may withhold the bulk of the requested information in Exhibits A and B at this time pursuant to section 552.108 (a)(2) of the Government Code.

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). This office considers such basic information to encompass the front page offense report information the court held to be public in *Houston Chronicle Publishing Company 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). The DA’s office must release these types of information in accordance with *Houston Chronicle*.

Next you argue that some of information in Exhibit A is confidential under the Medical Practice Act (the “MPA”). Section 5.08 of the MPA, V.T.C.S. article 4495b, 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.

V.T.C.S. art. 4495b, § 5.08. Section 5.08(j)(3) 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). Thus, access to medical records is not governed by chapter 552 of the Government Code, but rather the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. See V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990). We conclude that you must withhold medical records in Exhibit A pursuant to the MPA.

We next address Exhibit B which contains criminal history reports and TCIC/NCIC information. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. See Open Records Decision Nos. 616 (1993), 565 (1990). Some of the enclosed documents 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 (NCIC) or the Texas Crime Information Center (TCIC) is generally confidential by law. 28 C.F.R. § 20; Gov't Code § 411.083. We have a request for factual data on file pertaining to a particular named person. Therefore, you must withhold CHRI from disclosure under section 552.101 of the Government Code, in conjunction with 28 CFR § 20 and section 411.083 of the Government Code, as information deemed confidential by law. Thus Exhibit B must be withheld from public disclosure.

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 questions about this ruling, please contact our office.

Yours very truly,

*David Van Brunt Price*  
David Van Brunt Price  
Assistant Attorney General  
Open Records Division

Ref: ID# 121930

Enclosures: Submitted documents

cc: Mr. Carl D. Farris  
7511 Brushy Court  
Houston, Texas 77088  
(w/o enclosures)