



May 5, 1999

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

OR99-1228

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123810.

The Harris County District Attorney (the “district attorney”) received an open records request for the prosecution files pertaining to three criminal offenses of sexual assault of a child. You state that some of the requested information will be released to the requestor. You have submitted to this office as responsive to the request a representative sample of documents that you contend are excepted from public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

You have submitted to this office certain documents which you contend constitute “work product” that is excepted from public disclosure pursuant to section 552.108(a)(3). Section 552.108(a)(3) provides that information is excepted from public disclosure under the Public Information 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) it is information that reflects the mental impressions or legal reasoning of an attorney representing the state. In accordance with previous rulings issued by this office, and assuming these documents were created by an attorney representing the state, we agree that the documents contained in Exhibit A may be withheld pursuant to section 552.108(a)(3).<sup>1</sup>

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<sup>1</sup>We note that, pursuant to section 552.108(c), the district attorney may not withhold “basic information” about the offense from the requestor. We assume for purposes of this ruling, however, that such information was contained within the documents you have previously released to the requestor.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision.” (Emphasis added.) The dissemination of criminal history record information (“CHRI”) obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). 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. We conclude that the district attorney must withhold all CHRI contained in Exhibit B.

We note that all of the remaining documents you submitted to this office were gathered or created by the district attorney during the course of the criminal investigation of the sexual assault of a child. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

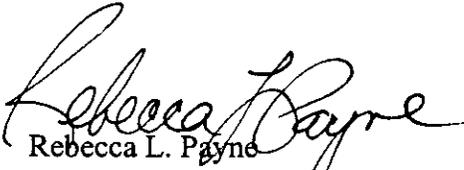
You have not informed this office of any rules the district attorney has adopted that would permit access to the requested records. Because all of the information contained in Exhibit C pertains to an investigation of sexual assault of a child, this office concludes that the district attorney must withhold these records in their entirety pursuant to section 261.201 of the Family Code.<sup>2</sup>

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<sup>2</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 No. 499

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.

Sincerely,

  
Rebecca L. Payne  
Chief, Open Records Division

RLP/RWP/eaf

Ref.: ID# 123810

encl. Submitted documents

cc: Mr. R.J. Vargas  
3700 North Main  
Houston, Texas 77009  
(w/o enclosures)

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(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.