



June 4, 1999

Ms. Rosalinda O. Fierro
Paralegal
Records Division
District Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR99-1550

Dear Ms. Fierro:

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# 124652.

The Travis County District Attorney (the "district attorney") received an open records request for "all records, files, photographs and evidence pertaining to the case of State of Texas vs. William Busenburg, and Stephanie Lynn Martin, Cause Number 95-0838, in the 167th Judicial District Court of Travis County." You state that the related offense report, medical examiner's report, and copies of documents on file with the district clerk will be made available to the requestor. You seek to withhold certain other information held by the district attorney pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

You first seek to withhold pursuant to section 552.101 certain of the criminal defendants' banking records. In Open Records Decision No. 373 (1983), this office concluded that

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance

benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373 at 3.

The banking records you submitted to us for review reveal one of the criminal defendant's deposits, withdrawals, balances, and related account activity. These are the types of information that would normally be deemed as "highly intimate or embarrassing." In this instance, however, we believe that the fact that the district attorney obtained these records for use as evidence in a murder investigation constitutes a special circumstance that would make this information a matter of legitimate public interest. Consequently, the district attorney may withhold only the criminal defendants' bank account numbers pursuant to common-law privacy. The remaining information in these records must be released.

You also seek to withhold pursuant to common-law privacy the contents of a victim impact statement and a personal letter written from one of the criminal defendants to the other. We agree that, to the extent that the victim impact statement reflects emotional/mental distress of the murder victim's family member, such information must be withheld pursuant to section 552.101. *See* Open Records Decision No. 343 (1982). We have marked this document accordingly. Similarly, we believe that the correspondence from one defendant to the other is both highly intimate and of no legitimate public interest, and therefore must be withheld from the public in its entirety.

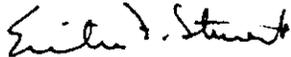
We also note that the victim impact statement contains the driver's license number of the murder victim's family member. Section 552.130(a)(1) of the Government Code requires that the district attorney withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Because this type of information is made confidential under section 552.130(a) of the Government Code, we conclude that the district attorney must withhold the driver's license number pursuant to section 552.130(a)(1).¹ However, except as discussed above, all remaining information contained in the victim impact statement must be released.

¹The victim impact statement also contains the social security number of the murder victim's family member. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. (1994) 622. These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* If such is the case here, the social security number is confidential under section 405(c)(2)(C)(viii)(I), and excepted from public disclosure under section 552.101 of the Open Records Act.

Finally, you contend that certain records that you characterize as “attorney work product” are excepted from required public disclosure pursuant to section 552.108. Section 552.108(a)(3) provides that information is excepted from public disclosure 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. After reviewing your arguments under section 552.108, we agree that most of the documents you submitted to this office as constituting “work product” may be withheld pursuant to section 552.108(a)(3). The district attorney must release, however, the handwriting samples submitted to the Texas Department of Public Safety for purposes of obtaining a handwriting analysis.

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.² If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS/RWP/eaf

Ref.: ID# 124652

encl: Marked documents

cc: Ms. Suzy Spencer
6410 Five Acre Wood
Austin, Texas 78746
(w/o enclosures)

²In 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 (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.