



March 7, 2000

Mr. Thomas F. Keever
Assistant District Attorney
Office of the Criminal District Attorney
P.O. Box 2850
Denton, Texas 76202

OR2000-0933

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID #132704.

The Denton County District Attorney (the "district attorney") received a request for his entire files relating to a specified case. You state that the district attorney is making some of the requested information available to the requestor. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We initially note that some of the responsive information is made expressly public under other law and therefore may not be withheld from disclosure under chapter 552 of the Government Code. *See* Open Records Decision Nos. 623 (1994), 525 (1989) (as a general rule, exceptions to disclosure provided in Public Information Act are inapplicable to information that law other than the act expressly makes public). Thus, any documents filed with a court are public and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Additionally, the submitted information contains autopsy records that are made public under section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The records are subject to required public disclosure in accordance with Chapter 552,

Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11 (West Supp. 2000). Thus, all of the submitted autopsy records are public and must be disclosed.

Turning to the exceptions you raise, we first address your claim that the responsive records contain criminal history record information (“CHRI”) that is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 protects information considered to be confidential by law, either constitutional, statutory, or by judicial decision. We agree that the district attorney must withhold all CHRI obtained from the National Crime Information Center (“NCIC”) or the Texas Crime Information Center (“TCIC”). The dissemination of 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 that it generates. *See* ORD 565 at 10-12. 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 CHRI except to another criminal justice agency for a criminal justice purpose. *See* 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. Further, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. Therefore, any criminal history record information obtained from the NCIC or the TCIC must be withheld pursuant to section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

You also claim that other responsive information is excepted from disclosure under section 552.103 of the Government Code. As amended by the Seventy-sixth Legislature, section 552.103 provides as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature 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.
- (b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable

statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103. You state that the information in question relates to a criminal case in which the defendant was convicted of manslaughter, remains incarcerated, and has not exhausted his postconviction remedies. Based on your representations, we conclude that responsive information that is not made expressly public under other law or considered to be confidential under section 552.101 is excepted from disclosure under section 552.103. *See also Curry v. Walker*, 873 S.W.2d 379, 380-81 (Tex. 1994); Open Records Decision Nos. 575 (1990); 574 (1990). We note, however, that section 552.103 does not except from disclosure basic front-page information about the crime to which requested information pertains. *See* Open Records Decision Nos. 597 (1991), 362 (1983); *see also* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. 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); Open Records Decision No. 127 (1976).

In sustaining your claim under section 552.103, we assume that the opposing party to the criminal case has not had access to any of the requested information that you seek to withhold. To the extent that the opposing party to that case has seen or had access to any of the requested information, there is no interest under section 552.103 in withholding that information from public disclosure. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, any requested information that is confidential by law must not be released even at the conclusion of the litigation. *See* Gov't Code §§ 552.101, 552.352.

In summary, responsive information that is made expressly public under law other than the Public Information Act must be released to the requestor. Criminal history record information is confidential under section 552.101 of the Government Code and must not be disclosed. Except for basic information, other responsive information that relates to the criminal case, and to which the opposing party to that case has not had access, is excepted from disclosure under section 552.103 until the conclusion of the criminal case. As we are able to make a determination under sections 552.101 and 552.103, we do not address your claim under section 552.108. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

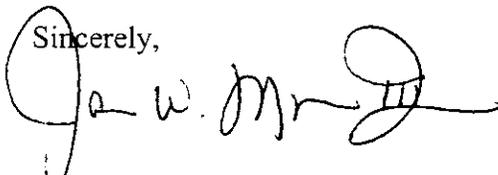
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 132704

Encl. Submitted documents

cc: J. R. Black & Associates
Investigators
3409 Jomar Drive
Plano, Texas 75075
(w/o enclosures)