



March 29, 2000

Ms. Susan D. Reed
Criminal District Attorney
Bexar County Justice Center
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2000-1212

Dear Ms. Reed:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133468.

The Bexar County District Attorney's Office (the "office") received a request for a copy of all documents in the district attorney's file regarding the investigation of a sexual assault. You claim that the requested information is excepted from disclosure under sections 552.003, 552.101, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted documents, such as the search warrant, the judgment of conviction, and the indictment, appear to have been filed with a court.

Documents filed with the court are public documents and must be released. *See* Gov't Code § 552.002(a)(17) (providing that information contained in a public court record is public information); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

First, you assert that grand jury documents in Exhibit B fall under the judiciary records exclusion of section 552.003(1)(B) of the Government Code. The Public Information Act (the "act") does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information prepared or collected by the agent is within the grand jury's constructive possession. *Id.* Information not held or maintained in this manner is not exempt from coverage of the act and may be withheld only if one of the act's specific exceptions applies to the information. *Id.* Furthermore, information obtained pursuant to a grand jury subpoena issued in connection with the prosecution is within the grand jury's constructive possession and is not subject to the act. *Id.*; *see also* Gov't Code § 552.003. Because Exhibit B contains a grand jury subpoena and

records obtained pursuant to the grand jury subpoena, it appears that the information is within the constructive possession of the grand jury. As such, the grand jury documents, which you marked as excepted under section 552.003, are not subject to disclosure under the act.

You also assert that marked portions of the documents are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You assert that the case was not billed by the grand jury and thus, concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable and your office may withhold the documents identified as being subject to section 552.108(a)(2).

You also assert that four documents are excepted from disclosure under section 552.108(b)(2) and (3). Section 552.108(b) provides the following:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of section 552.021 if:

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Because the internal records or notations relate to an investigation that did not result in conviction or deferred adjudication, we conclude that you may withhold the four documents under section 552.108(b)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 177. However, you assert that, due to the private nature of the offense, the release of basic information would violate the victim's common law privacy interest.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* Any information tending to identify sexual assault victims must be withheld pursuant to common law privacy. *See* Open Records Decision No. 393 (1983).

However, section 552.023 of the Government Code grants a special right of access to a person or a person’s authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests. In this instance, the requestor is the attorney of the sexual assault victim. Because withholding information tending to identify sexual assault victims protects the common law privacy of the victim, the victim’s authorized representative has a special right of access to this information and your office may not withhold information tending to identify the sexual assault victim under common law privacy. Therefore, you must release basic information as required by section 552.108(c) of the Government Code. Thus, with the exception of the basic front page offense and arrest information, you may withhold the information you have marked from disclosure based on subsections 552.108(a)(2) and 552.108(b)(2).

You also assert that section 552.101 protects criminal history record information (“CHRI”). Exhibit B contains CHRI compiled from the Bexar County criminal justice information system and the San Antonio Police Department database. 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). Thus, you must withhold the locally compiled CHRI under the right of privacy and section 552.101 of the Government Code.

Exhibit B also contains CHRI generated by the National Crime Information Center (“NCIC”) and the Texas Crime Information Center (“TCIC”) which is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) 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. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. 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. *See Open Records Decision No. 565 (1990).* Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Thus, you must withhold the CHRI which you have marked in Exhibit B.

In conclusion, we find that you may withhold from disclosure the information your office has marked under subsections 552.108(a)(2) and 552.108(b)(2), but must release basic information as required by section 552.108(c). Further, you must withhold CHRI under section 552.101. Documents that have been filed with a court must be released and the grand jury records are not subject to the Act. We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

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.

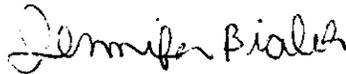
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ljp

Ref: ID# 133468

Encl. Submitted documents

cc: Ms. Laura Spatz
Haynes & Boone
112 E. Pecan Street, Suite 1600
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(w/o enclosures)