



May 23, 2000

Mr. John L. Schomburger  
Assistant Criminal District Attorney  
Collin County Courthouse  
210 South McDonald, Suite 324  
McKinney, Texas 75069

OR2000-2048

Dear Mr. Schomburger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135495.

Collin County (the "county") received a request for all records held by the District Attorney's Office concerning a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

First, we address your claim that section 552.108 of the Government Code excepts the submitted information from disclosure. Section 552.108 excepts from required public disclosure:

- (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 detection, investigation, or prosecution of crime only in relation to an

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<sup>1</sup>You also state that in accordance with section 552.305(d), you have notified a third party of the request for information by a letter dated March 16, 2000. However, the third party has not submitted written reasons for withholding any of the submitted information on privacy grounds.

(3) it is information that:

(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 [and]

(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 . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(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.

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

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you refer to section 552.108, you do not specify which subsection you believe is implicated. However, in regard to section 552.108, you seem to raise two arguments: that the submitted documents pertain to a criminal case that is pending, and that the submitted documents consist of attorney work product. Accordingly, we understand you to raise sections 552.108(a)(1), 552.108(a)(3), and 552.108(b)(3).

In order to prevail on a claim that information is excepted from disclosure under section 552.108(a)(1), a governmental body must show that release of the information would interfere with an ongoing criminal case. Gov't Code § 552.108(a)(1). You state that although the case to which the submitted documents pertain has not been formerly charged due to an affidavit of non-prosecution, new circumstances could cause the case to be reopened. You advise that an example of such new circumstances would be if the subject of the request committed a new assault. We do not consider an otherwise closed case to remain pending because of the existence of such an abstract possibility. Moreover, you do not explain, and we cannot assume, that the release of the submitted information would interfere with law enforcement in regard to a future incident of assault. Therefore, we find you have not shown that the submitted information would interfere with an ongoing criminal case. Accordingly, the county may not withhold any of the submitted information under section 552.108(a)(1).

In order to show that information falls under section 552.108(a)(3) or section 552.108(b)(3), a governmental body must show that the information at issue was prepared by a prosecutor in the course of preparing for criminal litigation or that the information reflects the prosecutor's mental impressions or legal reasoning. See Gov't Code §§ 552.108(a)(3), (b)(3). In this instance, you neither show nor do the submitted documents indicate that they were prepared by a prosecutor in the course of preparing for litigation. Furthermore, we find no evidence of a prosecutor's mental impressions within the submitted documents themselves or in the order in which they were submitted. Therefore, the department may not withhold any of the submitted information under section 552.108(a)(3) or 552.108(b)(3).

We turn now to your claim that section 552.111 excepts some portion of the submitted information. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." You have provided no explanation as to how or why section 552.111 applies to any of the submitted information. Accordingly, the county may not withhold any of the submitted information under section 552.111.

You also raise section 552.101 of the Government Code in regard to portions of the submitted information.<sup>2</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions regarding criminal history information. Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential by statute. 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

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<sup>2</sup>We note that you neither explain the applicability of section 552.101 to any portion of the submitted information nor do you cite a law requiring confidentiality that would be encompassed by section 552.101.

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. The submitted information contains confidential CHRI the release of which is governed by chapter 411. Therefore, the county may not release such criminal history information to the requestor. We have marked the information that the county must withhold under chapter 411 in conjunction with section 552.101.

Section 552.101 also encompasses information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We find that a portion of the submitted information is confidential under common law privacy as encompassed by section 552.101. Therefore, under section 552.101, the county must withhold the portion of the submitted information that we have marked.

Section 552.101 also encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes confidential social security numbers and related records that have been obtained or 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.* The submitted information contains a social security number that may be confidential under the Social Security Act in conjunction with section 552.101. However, it is not apparent to us that this social security number has been obtained or maintained by the county pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the county to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I). We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, the

county should ensure that the number has not been obtained or maintained by the county pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you raise section 552.130 of the Government Code. Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. We find that the submitted information contains a Texas driver's license number that is confidential under section 552.130. We have marked the license number which the county must withhold.

In conclusion, the county must withhold only the information that we have marked. The marked information consists of information that is confidential under chapter 411 of the Government Code as encompassed section 552.101, information that is confidential under common law privacy as encompassed by section 552.101, and information that is confidential under section 552.130. In addition, we have marked a social security number which may be confidential under section 552.101 in conjunction with federal law. We note that the requestor's client has a right of access to her own information even though the information would ordinarily be confidential under laws intended to protect her privacy interests. Gov't Code § 552.023. With the exception of only the information that we have marked, the county must release the submitted information.<sup>3</sup>

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

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<sup>3</sup>We note that page 2 of the submitted Affidavit of Non-Prosecution indicates that more responsive information is to be found on the reverse side of that page. However, because you did not submit the information that is on the back of page 2 for our review, we have no basis for finding that this information should be withheld. Therefore, in addition to the information described above, the department must also release the information on the back of page 2 of the Affidavit of Non-Prosecution to the requestor.

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc\ljp

Ref: ID# 135495

Encl: Submitted documents

cc: Mr. Daniel B. Jones  
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(w/o enclosures)