



August 7, 2000

Ms. Larissa T. Roeder
Assistant District Attorney
County of Dallas
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2000-2982

Dear Ms. Roeder:

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# 137779.

The Dallas County District Attorney's Office (the "district attorney") received a request for information relating to an automobile accident that involved two fatalities. You inform us that some responsive information held by the district attorney has been made available to the requestor. You claim that other requested 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 the submitted information includes autopsy records that are subject to disclosure under other law.¹ Section 11, article 49.25 of the Code of Criminal Procedure 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

¹As a general rule, statutes outside the Public Information Act that expressly make certain information public prevail over exceptions to required public disclosure under chapter 552 of the Government Code. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

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. Thus, except for photographs taken in connection with the autopsy, which you must withhold, the autopsy records included in the requested information are public and must be disclosed.

You claim that the submitted records include criminal history information that is protected from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Statutory confidentiality under section 552.101 requires express language providing that certain information is confidential or that it shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987). Criminal history record information (“CHRI”) is confidential under federal and Texas law. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety (the “DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, criminal history record information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with the foregoing provisions of federal and state law.

You also claim that other responsive information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the “law enforcement exception,” provides in relevant part that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to public disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you represent to this office that the information that you seek to withhold under section 552.108 relates to two pending criminal cases and that the release of the information in question would interfere with the district attorney’s prosecution of those

cases. Based on your representations and our review of the information in question, we conclude that it is excepted from disclosure under section 552.108(a)(1) of the Government Code.

We note, however, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest report information held to be public in *Houston Chronicle Publishing Company 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). Section 552.108(c) requires the district attorney to release basic front-page information, including a detailed description of the offense, even if that information does not literally appear on the front page of the corresponding police report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). You inform us that front page and other responsive information has been made available to the requestor. Accordingly, the district attorney may withhold the rest of the information that relates to the pending prosecutions under section 552.108(a)(1).

In summary, autopsy records must be released in accordance with section 11 of article 49.25 of the Code of Criminal Procedure. Criminal history record information is confidential under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code and must be withheld from disclosure. Other information that relates to the pending criminal cases and that the district attorney seeks to withhold is excepted from public disclosure under section 552.108 of the Government Code. As we are able to make a determination under sections 552.101 and 552.108, we need not consider your claim under section 552.103.²

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).

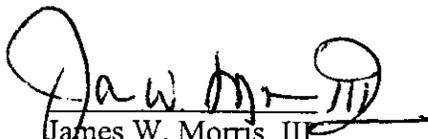
²We note, however, that a successful claim under section 552.103 generally does not except from required public disclosure essentially the same basic information that must be released under section 552.108(c). *See* Open Records Decision Nos. 597 (1991), 362 (1983).

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,



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

JWM/ljp

Ref: ID# 137779

Encl. Submitted documents

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