



August 23, 2000

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

OR2000-3234

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138387.

The criminal district attorney's office of Denton County (the "county") received a request for information regarding a specified attempted murder prosecution. You indicate that you have released responsive information to the requestor, which you have submitted as exhibit C, but that you seek to withhold other responsive information, which you have submitted to this office as exhibits, D, E, and F. You claim that the information in exhibits, D, E, and F, is excepted from public disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is made confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") which 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 (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal

justice agencies). 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 the information 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 the information 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. Exhibit D consists of criminal history record information that must be withheld under section 552.101 of the Government Code.

You assert that the documents labeled exhibit E are excepted from disclosure under section 552.101 in conjunction with laws governing the confidentiality of grand jury proceedings. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so that records within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. ORD 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* You state that the documents in exhibit E are transcripts of grand jury proceedings. To the extent that these materials are in the custody of the district attorney as agent for the grand jury, we conclude that they are in the constructive possession of the grand jury and are therefore not subject to disclosure under chapter 552 of the Government Code.

You relate that exhibit F consists of information prepared by prosecuting attorneys in the course of preparing for criminal litigation. Section 552.108(b)(3)(B) excepts information from disclosure if the information is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation. The information in exhibit F may, therefore, be withheld under section 552.108 of the Government Code.¹

As the above discussion resolves this request for decision, we do not address the arguments you raise under other sections of the Government Code.

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.

¹We note that section 552.108 does not exclude "basic" information from disclosure. Gov't Code § 552.108(c). However, from our review of exhibit F we conclude that it does not include "basic" information.

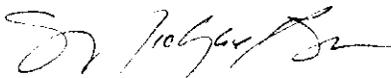
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 138387

Encl Submitted documents

cc: Mr. John R. Sands
Sandiver & Associates
2104 Monroe Street, Suite B
Commerce, Texas 75428
(w/o enclosures)