



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2012

Mr. Martin L. Peterson
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2012-06848

Dear Mr. Peterson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 452986.

The Dallas County District Attorney's Office (the "district attorney") received a request for the district attorney's files regarding three specified criminal prosecutions against a named individual. You state you have released portions of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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 the Department of Public Safety ("DPS") maintains, except 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. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F. Upon review, we agree the information in Exhibit B constitutes confidential CHRI. Accordingly, the district attorney must withhold the information in Exhibit B under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.108 provides in part:

(a) Information 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:

...

(4) 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.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters related to law enforcement or prosecution is excepted from [required public disclosure] if:

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

Gov't Code § 552.108(a)(4), (b)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You raise subsection 552.108(a)(4) for the information in Exhibit A. You contend the information at issue reflects the mental impressions and legal reasoning of the district attorney. You state this information was created in anticipation of or in the course of preparing for criminal litigation. Upon review, we find the information at issue was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude subsection 552.108(a)(4) is applicable, and the district attorney may withhold the information in Exhibit A under section 552.108 of the Government Code.¹

You raise subsection 552.108(b)(1) for the information in Exhibit C. Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pct.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques were any different from those commonly known).

You state the information in Exhibit C is part of a database assembled and maintained for criminal justice purposes and argue “its release would show the general format and type of information gathered on criminal suspects in Dallas County and could compromise how the information is stored and accessed.” Upon review, we find you have failed to demonstrate how release of this information would interfere with law enforcement and crime prevention. Accordingly, the district attorney may not withhold the information in Exhibit C under section 552.108(b)(1) of the Government Code.

In summary, the district attorney must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with chapter 411 of the Government

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Code. The district attorney may withhold the information in Exhibit A under section 552.108 of the Government Code. The remaining information must be released.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 452986

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released includes information to which the requestor has a special right of access. See Gov't Code § 552.023(a) (person's authorized representative has special right of access, beyond right of general public, to information held by a governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the district attorney should receive another request for this information from a different requestor, the district attorney must again request a ruling from this office.