



January 6, 2000

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
County of Harris
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR2000-0055

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130925.

The Harris County District Attorney's Office (the "district attorney") received a request for all documents related to the district attorney's investigation of a custodial death. You indicate that you will release "front page offense report" information to the requestor.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You assert that the documents you have marked as "Exhibit A" are excepted from disclosure by section 552.108 of the Government Code. Section 552.108(a)(2) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." You indicate that the case which

¹See *Houston Chronicle Publ'g Co. 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); see also Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

is the subject of these documents was “presented to a grand jury that failed to return a true bill,” therefore the case did not result in a conviction or deferred adjudication. After reviewing the records at issue, we conclude that you have demonstrated that most of the information in Exhibit A may be withheld under section 552.108(a)(2).

We note, however, that section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. Open Records Decision No. 525 (1989). Section 11 has been amended to provide that

[t]he records [of an autopsy] 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 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.

Act of May 22, 1999, 76th Leg., R.S., ch 607, § 2. This amendment took effect on September 1, 1999. *Id.* § 3. We conclude that the district attorney must release the entire autopsy report to the requestor.

You indicate that the documents you have marked as “Exhibit B” are excepted from disclosure pursuant to 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.” This section encompasses information protected by other statutes. Among the information submitted for our review are print-outs that appear to contain criminal history record information (“CHRI”) generated by the Texas Crime Information Center (“TCIC”), the National Crime Information Center (“NCIC”), or the district attorney. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code 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, Gov’t. Code § 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), and 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.

Additionally, you assert that section 552.101 excepts from disclosure the documents you have submitted as “Exhibit C.” These documents consist of “grand jury subpoenas, documents...obtained with grand jury subpoenas and documents presented to the grand jury.” The grand jury is an extension of the judiciary for purposes of the Public Information Act. Open Records Decision Nos. 513 (1988), 433 (1986), 411 (1984), 403, 398 (1983). The records of the judiciary are not subject to the act. *See* Gov’t Code § 552.003(B). The act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 at 3 (1988). When an individual or entity acts at the direction of a grand jury as the grand jury’s agent, information held or collected by the agent is within the grand jury’s constructive possession. *Id.* Thus, information in a district attorney’s actual possession may be in a grand jury’s constructive possession if the information was prepared at the grand jury’s direction. Such records are records of the judiciary, and thus, are not subject to the act.

However, the fact that information a district attorney collected or prepared was submitted to a grand jury, taken alone, does not mean that the information is in the grand jury’s constructive possession. *Id.* The documents that you indicate were presented to the grand jury may not be in the actual or constructive possession of the grand jury. These documents, if any, must be withheld from public disclosure based on section 552.101 of the Government Code. Section 552.101 excepts information that is confidential by law, including information made confidential by statute. Article 20.02(a) of the Code of Criminal Procedure states that “[t]he proceedings of the grand jury shall be secret.” Thus, with regard to the information that is not within the grand jury’s constructive possession, the information is protected from required public disclosure by section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure, as information that reveals the proceedings of the grand jury.

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 130925

Encl. Submitted documents

cc: Ms. Kathleen Rolston Robbins
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(w/o enclosures)