



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2016-13443

Dear Ms. Sheely:

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# 614018.

The Travis County District Attorney's Office (the "district attorney's office") received a request for all information pertaining to a specified case. 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 representative sample of information.¹

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 information protected by other statutes, such as laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See* Gov’t Code § 411.083(a). 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). 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* ORD 565. Accordingly, the district attorney’s office must withhold the CHRI you have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.108 of the Government 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 relating to law enforcement or prosecution [is excepted from required public disclosure] if:

...

(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.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming section 552.108(a)(4) or 552.108(b)(3) of the Government Code must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), (b)(3), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information consists of information that was created or assembled by prosecutors in anticipation of, or in the course of preparing for, criminal litigation. You state this information relates to the prosecution of a crime and reflects the mental impressions and legal theories of attorneys representing the state. Upon review, we find the information at issue was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental impressions or legal reasoning of an attorney representing the state. Accordingly, we find the district attorney's office may withhold the remaining information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

In summary, the district attorney's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The district attorney's office may withhold the remaining information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 614018

Enc. Submitted documents

c: Requestor
(w/o enclosures)