



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2017

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

OR2017-16919

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# 668193.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. You state the district attorney's office will release some information. 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 article 42A.256 of the Code of Criminal

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.

Procedure. Article 42A.256 is applicable to presentence investigation and postsentence reports and provides, in part:

(a) The judge by order may direct that any information and records that are not privileged and that are relevant to a presentence or postsentence report be released to a supervision officer conducting a presentence investigation under [subchapter F of Chapter 42A of the Code of Criminal Procedure] or preparing a postsentence report under Article 42A.259. The judge may also issue a subpoena to obtain that information.

(b) A presentence or postsentence report and all information obtained in connection with a presentence investigation or postsentence investigation report are confidential and may be released only as:

(1) provided by:

(A) Subsection (c);

(B) Article 42A.255;

(C) Article 42A.257;

(D) Article 42A.259; or

(E) Section 614.017, Health and Safety Code; or

(2) directed by the judge for the effective supervision of the defendant.

Crim. Proc. Code art. 42A.256(a), (b). You assert the information you indicated consists of a presentence investigation report. Additionally, you assert none of the release provisions in article 42A.256 are applicable. Accordingly, we conclude the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with article 42A.256 of the Code of Criminal Procedure.² However, we find the district attorney's office has failed to demonstrate the remaining information at issue consists of information subject to article 42A.256 of the Code of Criminal Procedure. Accordingly, the district attorney's office may not withhold the remaining information at issue on that basis.

²Although you raise section 552.101 of the Government Code in conjunction with section 9 of article 42.12 of the Code Criminal Procedure, we note the 84th Legislature repealed this statute effective January 1, 2017. *See* Act of June 17, 2015, 84th Leg., R.S., ch. 770, §§ 3.01, 4.02, 2015 Tex. Gen. Laws 2320, 2395.

Section 552.108 of the Government Code states, in pertinent part, the following:

(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 an exception to disclosure under subsection 552.108(a)(4) or subsection 552.108(b)(3) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A). You argue the information you have indicated consists of internal notations or records prepared by an attorney representing the state or consists of the mental impressions or legal reasoning of an attorney representing the state. Based on your representations and our review, we agree subsection 552.108(a)(4) and subsection 552.108(b)(3) are applicable to the information at issue. Accordingly, the district attorney's office may withhold the information it indicated under subsection 552.108(a)(4) and subsection 552.108(b)(3) of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 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. Thus, 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 or subchapter E-1 of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find the information we marked consists of CHRI the district attorney’s office must withhold under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated any portion of the remaining information at issue consists of CHRI for purposes of chapter 411 of the Government Code, and the district attorney’s office may not withhold it under section 552.101 on that basis.

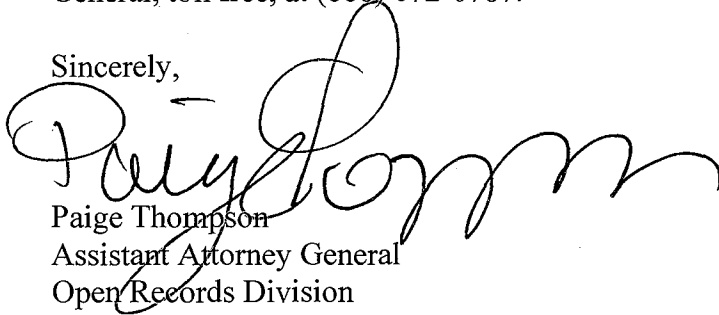
In summary, the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with article 42A.256 of the Code of Criminal Procedure. The district attorney’s office may withhold the information it indicated under subsection 552.108(a)(4) and subsection 552.108(b)(3) of the Government Code. The district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The district attorney’s office must release the remaining information.³

³We note the requestor has a special right of access to some of the information being released in this instance. *See Gov’t Code* § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party’s representative, solely on grounds that information is considered confidential by privacy principles). Further, we note the requestor can obtain his client’s CHRI from DPS. *Id.* § 411.083(b)(3).

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,

A handwritten signature in black ink, appearing to read "Paige Thompson", is written over the typed name and title.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 668193

Enc. Submitted documents

c: Requestor
(w/o enclosures)