



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2017

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

OR2017-25819

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# 689479 (ORR# 539315-1).

The Travis County District Attorney's Office ("TCDA") received a request for information pertaining to the requestor's client. TCDA states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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:

...

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 those records contain substantially different types of information than that submitted to this office.

(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 section 552.108 must 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* Open Records Decision No. 434 at 2-3 (1986). TCDA contends the information it has marked under subsections 552.108(a)(4) and 552.108(b)(3) was prepared by TCDA staff in preparation for trial. Thus, TCDA asserts the information at issue reflects the mental impressions and legal reasoning of TCDA. Based on these representations, we agree TCDA may withhold the information it has marked under subsections 552.108(a)(4) and 552.108(b)(3).

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 chapter 411 of the Government Code, which pertains to 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 that 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.*

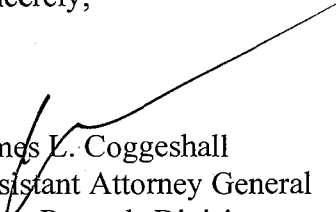
Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but 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 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. Upon review, we agree the remaining is confidential under section 411.083. Therefore, TCDA must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.²

In summary, TCDA may withhold the information it has marked under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. TCDA must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

²We note individuals may obtain their own criminal record history information from DPS. *See* Gov't Code § 411.083(b)(3).

Ref: ID# 689479

Enc. Submitted documents

c: Requestor
(w/o enclosures)