



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 16, 1997

The Honorable David Sibley  
State Senator  
P.O. Box 12068  
Austin, Texas 78711

Open Records Decision No. 655

Re: Whether a Housing Authority may obtain criminal history record information regarding housing applicants and whether a county may obtain criminal history record information regarding applicants for county employment pursuant to subchapter F of Chapter 411 of the Government Code (ORQ-17)

Dear Senator Sibley:

On behalf of the County of Comanche you ask whether a local housing authority may obtain criminal history record information ("CHRI") regarding housing applicants. You also ask whether the county may obtain CHRI regarding applicants for county employment. Generally, CHRI is maintained by the Texas Department of Public Safety (the "department"), local criminal justice agencies, and the Federal Bureau of Investigation ("F.B.I."). Code Crim. Proc. art. 60.01, *et seq.*; 28 C.F.R. § 20.01, *et seq.*; Attorney General Opinion JM-1224 (1990); Open Records Decision No. 565 (1990). You state that the county and the public housing authorities customarily seek this information from local law enforcement agencies or the department.

Subchapter F of chapter 411 of the Government Code specifically addresses the release of CHRI maintained by the department. The statute defines CHRI as "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 charges and their dispositions. The term does not include: (A) identification information, including fingerprint records, to the extent that the identification does not indicate involvement of the person in the criminal justice system; or (B) driving record information." Gov't Code § 411.082(2); *see* Gov't Code § 411.081 (excluding specific information from Subchapter F).

CHRI is generally made confidential, but it may be released in limited circumstances. Section 411.083 of the Government Code provides that

(a) Criminal history record information maintained by the department is confidential information for the use of the department and, except as provided by this subchapter, may not be disseminated by the department.

(b) The department shall grant access to criminal history record information to:

(1) criminal justice agencies;

(2) noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information;

\* \* \* \*

(c) The department may disseminate criminal history record information under Subsection (b)(1) only for a criminal justice purpose. The department may disseminate criminal history record information under Subsection (b)(2) only for a purpose specified in the statute or order.

*See Code Crim. Proc. art. 60.06 (b) (CHRI compiled by department or Texas Department of Criminal Justice may be disclosed only as authorized by federal or state law). Furthermore, CHRI obtained from the department pursuant to chapter 411 of the Government Code is also confidential and may only be disclosed in very limited instances. Section 411.084 of the Government Code provides that*

[c]riminal history record information obtained from the department under this subchapter:

(1) is for the exclusive use of the authorized recipient of the information; and

(2) may be disclosed or used by the recipient only if, and only to the extent that, disclosure or use is authorized or directed by:

- (A) this subchapter;
- (B) another statute;
- (C) a rule adopted under a statute; or
- (D) an order of a court of competent jurisdiction.

Similarly, federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the*

purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”); *see also* Code Crim. Proc. art. 60.06(b). Thus, to obtain CHRI maintained by the department, public housing authorities and counties must be authorized to receive it under the Government Code’s access provisions.

We will first examine whether a public housing authority may obtain CHRI from the department concerning applicants for public housing. The Government Code provides that an employer at a subsidized housing residence may obtain CHRI for an applicant for employment at the residence. Gov’t Code § 411.118, *amended by* Act of May 21, 1997, H.B. 1576, 75th Leg., R.S.; *see* Human Res. Code § 135.003(a), *amended by* Act of May 21, 1997, H.B. 1576, 75th Leg., R.S. (to be codified at Health & Safety Code §§ 765.001-.007). The Government Code does not specifically authorize a public housing authority to receive CHRI on applicants for the public housing. Congress, however, has recently empowered housing authorities under the Housing Opportunity Program Extension Act of 1996 with the right to obtain criminal records in other circumstances. 42 U.S.C. § 1437d(q)(1)(A), (B). The federal statute provides that

(A) notwithstanding any other provision of law, except as provided in subparagraph (B), the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction.

(B) A law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

42 U.S.C. § 1437d(q)(1)(A), (B).

Public housing agencies are defined by federal statute as “any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.” 42 U.S.C. § 1437a(b)(6); *see* Human Res. Code § 135.001(4), *amended by* Act of May 21, 1997, H.B. 1576, 75th Leg., R.S. (to be codified at Health & Safety Code § 765.001) (defining residential dwelling project). In Texas, chapter 392 of the Local Government Code provides for the creation of municipal, county, and regional housing authorities. Local Gov’t Code §§ 392.011-.013. These housing authorities are considered agencies of the entities that create them. *See* Attorney General Opinion DM-426 (1996) at 2 (municipal, county, or regional housing authorities created under Local Government Code are “governmental bodies” subject to Open Meetings Act).

Given the above considerations, we conclude that a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. Accordingly, the department is required to provide CHRI to local housing authorities as provided by section 1437d.<sup>1</sup> Gov't Code § 411.083(b)(2). Moreover, section 411.087 of the Government Code provides that

(a) a person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the department criminal history record information maintained by the department that relates to another person is authorized to:

(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Consequently, because public housing authorities are authorized to obtain CHRI from the department, housing authorities are also authorized by the Government Code to obtain similar information from local criminal justice agencies<sup>2</sup> and the F.B.I. Gov't Code § 411.084; Gov't Code § 411.087(a).

The Government Code, however, limits the use of CHRI. CHRI obtained from the department is for the exclusive use of the public housing agency and may only be disclosed to or used by a public housing agency to the extent authorized by the Housing Opportunity Program Extension Act of 1996. Gov't Code § 411.084(2)(B). Public housing agencies are limited by three primary restrictions. First, the federal statute provides that public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing. Second, CHRI may be used only for the purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). Third, juvenile information may only be released to public housing agencies as authorized by state law. 42 U.S.C. § 1437d(q)(1)(B). In Texas, the department is responsible for recording data and maintaining a database for the juvenile justice information system. Fam. Code § 58.102(a). The information contained in this system is generally confidential, but may be released in certain circumstances. Section 58.106 of the Family Code provides in relevant part that

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<sup>1</sup>The department has established a procedure for access to CHRI by Texas public housing authorities. Inquiries should be submitted to the Texas Department of Public Safety, Crime Records Service, P.O. Box 4143, Austin, Texas 78765-4143.

<sup>2</sup>The Government Code defines "criminal justice agency" as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." Gov't Code § 411.082(3)(A).

(a) Except as provided by Subsection (b), information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

\* \* \* \*

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code.

Because we have found that public housing agencies are authorized to obtain adult CHRI from the department under section 411.083 of the Government Code, they are also authorized to obtain similar information regarding juveniles contained in the juvenile justice information system. The limitations on disclosure and use outlined above apply to any information received from the department, local law enforcement agencies, or the F.B.I. Gov't Code § 411.087(b).

Furthermore, there are additional limitations when public housing authorities wish to obtain CHRI from the F.B.I. Section 411.087 of the Government Code provides:

(c) Subsection (a) [which allows access to other agencies' CHRI when entity authorized to receive department CHRI] does not authorize a person, agency, department, political subdivision, or other entity to obtain criminal history record information from the identification division of the Federal Bureau of Investigation if dissemination of criminal history record information by the division is prohibited by federal law, executive order, or rule.

(d) A person, agency, department, political subdivision, or other entity that is not a criminal justice agency is entitled to obtain criminal history record information from the Federal Bureau of Investigation only if:

(1) the requestor submits a complete set of the individual's fingerprints and other identifying information and pays any fee required and approved by the bureau;

(2) no disqualifying record or information from a state or local criminal justice agency is known to the requestor;

(3) the request is not for the purpose of discriminating against a person because of the person's race, sex, age, disability, religion, color, or national origin.

The United States Department of Justice and the United States Department of Housing and Urban Development, in fact, have developed a temporary agreement for access to CHRI maintained by the F.B.I. The agreement provides that

State or local law enforcement agencies are permitted access through the National Crime Information Center (NCIC) System to the Interstate Identification Index (III) for the purpose of determining whether a tenant or applicant for public housing has a criminal history record indexed. Access for this purpose does not entitle the requesting law enforcement agency to obtain the full content of automated records through the III. To obtain the full content of a criminal history record, the public housing agency shall submit a separate request accompanied by a fingerprint card to the Identification Records Section of the Federal Bureau of Investigation, and shall pay a reasonable fee.

To determine whether the public housing agency needs to obtain a full criminal history record, appropriate state and local law enforcement agencies are authorized to use NCIC access to perform name checks. These state and local law enforcement agencies are authorized to inform a public housing authority whether a name check reveals that a public housing applicant may have a criminal history record index. Such name checks are authorized for adults or for juveniles to the extent the release of such information is authorized under applicable state, local, or tribal law.<sup>3</sup>

If the state or local law enforcement agency informs the public housing agency that the name check reveals no additional information in the NCIC file for the name, birth date and social security number given by the public housing applicant, the public housing authority will not pursue further inquiries.

If the state or local law enforcement agency indicates that there is a criminal history record under the name, birth date and social security number given by the public housing applicant, the public housing authority will refer the applicant to the state or local law enforcement agency for fingerprinting (or otherwise arrange for fingerprinting). The law enforcement agency then will send the fingerprints to the Federal Bureau of Investigation for expeditious processing.

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<sup>3</sup>As discussed above, public housing authorities are authorized to receive juvenile offender information under section 58.106(a)(2) of the Family Code in conjunction with section 411.083 of the Government Code.

Henry G. Cisneros and Janet Reno, Agreement between U.S. Dep't of Housing and Urban Dev. and U.S. Dep't of Justice Regarding Access to National Crime Information Data (March 29, 1996) (footnote added).

We will now ascertain whether counties may obtain CHRI regarding applicants for county employment. We presume for this decision that you are asking whether the county as a noncriminal justice agency may obtain CHRI. See Gov't Code § 411.089 (providing for release of CHRI between criminal justice agencies); Code Crim. Proc. art. 61.03. Subchapter F of chapter 411 of the Government Code provides that certain enumerated entities may obtain CHRI. Gov't Code §§ 411.090-.128; see Gov't Code § 411.128 (municipalities entitled to obtain CHRI on applicants for employment). The Government Code does not specifically authorize a county to receive CHRI regarding applicants for county employment. The Government Code, however, does provide that a county or the county judge may obtain CHRI in certain other instances.<sup>4</sup> We can find no other federal or state statute or executive order that would authorize the county to receive CHRI from the department concerning applicants for county employment.

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<sup>4</sup>Counties may obtain CHRI for beer and wine permit applicants and for drivers of a public transportation vehicle. Section 411.120 of the Government Code provides:

(a) The county judge of a county is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a wine and beer retailer's permit under Chapter 25, Alcoholic Beverage Code; or

(2) an applicant for a retailer's on-premise license under Chapter 69 of that code.

(b) Criminal history record information obtained by a county judge under Subsection (a) may not be released or disclosed to any person except in a hearing held under Chapter 25 or 69, Alcoholic Beverage Code.

Likewise, section 411.124 of the Government Code provides that

(a) A political subdivision of this state that employs, licenses, or regulates drivers of public transportation vehicles is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) the driver of a public transportation vehicle; and

(2) employed, licensed, or regulated by the political subdivision.

Thus, a county may obtain CHRI only for the purposes authorized by the statute. Gov't Code § 411.084.

This office has uniformly concluded, nevertheless, that information may be transferred between governmental agencies which are subject to the Open Records Act without destroying the confidential nature of the information. Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 567 (1990), 561 (1990), 516 (1989). These decisions are grounded in the well settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989).<sup>5</sup> The decisions also recognize that a release to a state agency is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, and Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential under the act. *See id.*

Generally, information that is excepted from public disclosure under the Open Records Act may be transferred between state agencies without destroying its confidential character if the agency to which the information is transferred has the authority to obtain it. *See* Open Records Decision Nos. 516 (1989) (Department of Public Safety transfer to Texas Attorney General's Child Support Enforcement Office authorized by statute), 490 (1988) (Board of Vocational Nurse Examiners transfer to Texas Peer Assistance Program for Impaired Nurses authorized by statute). The principle that information may be transferred without destroying its confidential character, however, does not apply where a statute makes the information confidential and allows the transfer of the information to only certain enumerated entities. *See* Attorney General Opinion JM-590 (1986); Open Records Decision No. 650 (1996). *See also* Attorney General Opinion H-683 (1975) (prior to enactment of chapter 411 of Government Code, Department of Public Safety permitted to transfer confidential criminal history information to state licensing agencies that had express authority to take action based on existence of certain convictions). Subchapter F of chapter 411 of the Government Code deems CHRI maintained by the department confidential and allows its transfer only to certain entities. Thus, we do not believe that the circumstances present here allow a county to obtain CHRI from the department regarding applicants for county employment.<sup>6</sup>

## S U M M A R Y

Local public housing authorities are authorized to obtain criminal history record information for the purposes of applicant screening, lease enforcement, and eviction as provided by federal statute.

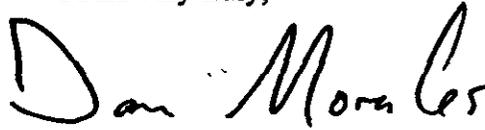
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<sup>5</sup>County and municipal governments are recognized as agencies of the state. *See* Attorney General Opinion H-836 (1976) at 4.

<sup>6</sup>We note, however, that local or regional CHRI maintained by a local entity is not made confidential by statute. *See* Gov't Code § 411.083(a); Code Crim. Proc. art. 60.06. Thus, an elected county official may be entitled to obtain CHRI maintained by local agencies that originates from the local agencies themselves. Code Crim. Proc. art. 60.06(c); Attorney General Opinion JM-1224 (1990) at 6-11. *See also* Attorney General Opinion JM-831 (1987) (Texas Rehabilitation Commission allowed to require job applicants to submit CHRI due to statutory authority and because of highly sensitive nature of employment).

Counties acting as a noncriminal justice agency, on the other hand, are not authorized by the Government Code to obtain criminal history record information regarding applicants for county employment.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly slanted style.

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