



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 12, 1996

Mr. David M. Douglas
Assistant Chief
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0938

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34975.

The Department of Public Safety (the "department") received a request for any records in its possession pertaining to an individual who is now deceased. You have submitted an exhibit for our review and you contend the requested information is exempted from required public disclosure under section 552.101 of the Government Code.

Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You specifically assert section 411.083 and section 411.085 of the Government Code as expressly prohibiting the dissemination of criminal history records information ("CHRI"). The provisions provide:

(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 . . .

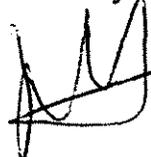
(d) The department is not required to release or disclose criminal history record information to any person that is not in compliance with rules adopted by the department under

this subchapter or rules adopted by the Federal Bureau of Investigation that relate to the dissemination or use of criminal history record information.

A review of the request reveals that the requestor is not an individual or entity with a statutory right of access¹ and we further note that the subject of the CHRI is deceased. With those observations made, the department is not required to release or disclose CHRI under section 411.085(d) of the Government Code, including either confirming or denying the existence of criminal history information, to any person that is not in compliance with the rules adopted by the department that relate to the dissemination or use of CHRI.² In addition, a review of the department's rules concerning a review of personal criminal history records indicates that the requestor does not fall within their purview. 37 TAC §27.1. Consequently, the department must withhold the CHRI under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

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¹Section 411.083(b) of the Government Code provides: 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 records information; (3) the person who is the subject of the criminal history record information; (4) a person working on a research or statistical project . . . (5) an individual or an agency that has a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice under that agree, if the agreement . . .

²Although it is also noted that section 411.081 of the Government Code does not prohibit a criminal justice agency from confirming previous criminal history record information to any person on specific inquiry about whether a name person was arrested, detained, indicated, or formally charged on a specified date, if the information disclosed is based on data excluded under subsection (b) of section 411.081 of the Government Code.

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Enclosure: Submitted document

cc: Mr. Marshall E. Ward
P.O. Box 12543
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(w/o enclosure)