



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2008

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2008-04899

Dear Ms. Smith:

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# 306250.

The Texas Department of Public Safety (the "department") received a request for sex offender registration records pertaining to a specified individual.<sup>1</sup> You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge that the department failed to request a decision from our office within the ten business day deadline mandated by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest

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<sup>1</sup>We note that the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your arguments under this section.

Next, we note that the submitted information contains final opinions and court-filed documents that are subject to section 552.022 of the Government Code. Section 552.022(a)(12) of the Government Code provides for required public disclosure of "final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(12). Also, information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See id.* § 552.022(a)(17). Additionally, such information is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the department may not withhold the court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy. Moreover, the records that are subject to section 552.022 do not contain any information that is confidential under other law for purposes of section 552.022. Therefore, those documents, which we have marked, must be released under subsections 552.022(a)(12) and 552.022(a)(17) of the Government Code.

You seek to withhold the remaining submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Generally, only highly intimate or embarrassing information that implicates the privacy of an individual is withheld. You assert, however, that the remaining submitted information must be withheld in its entirety under common-law privacy. We note there are certain situations in which entire documents must be withheld under common-law privacy because withholding only some of the information would not protect the subject individual's common-law right to privacy. *See e.g.*, Open Records Decision No. 393 (1983). Upon review, however, we find that you have failed to demonstrate that this is such an instance. However, we do find that the submitted documents contain some information that is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information, which we have marked, under section 552.101 in conjunction with common-law privacy. We find that the

remaining information concerns a matter of legitimate public interest. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

You also seek to withhold a portion of the remaining information under section 552.101 in conjunction with provisions of chapter 62 of the Code of Criminal Procedure. Chapter 62 establishes a sex-offender-registration program under which persons with a “reportable conviction or adjudication” or who are “required to register as a condition of parole, release to mandatory supervision, or community supervision” must register “with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days[.]” Crim. Proc. Code art. 62.051(a). Article 62.051(c) requires a sex offender registrant to provide the department with certain enumerated categories of information. *See id.* art. 62.051(c). Article 62.005 states that this information is public information, with the exception of the person’s social security number, driver’s license number, telephone number, all information required by the department outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. Crim. Proc. Code art. 62.005(b). In this instance, the remaining information includes sex offender registration records. However, based on your arguments and our review of those records, we understand that the individual at issue is no longer subject to the sex offender registration requirement, and the information at issue is no longer on the sex offender registration database. Therefore, we find that article 62.005 of the Code of Criminal Procedure is not applicable to the information at issue.

We note that section 552.101 also encompasses section 411.153 of the Government Code, which provides as follows:

- (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under the public information law, Chapter 552.
- (b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.
- (c) An offense under this section is a state jail felony.
- (d) A violation under this section constitutes official misconduct.

Gov’t Code § 411.153. A “DNA record” means the results of a forensic DNA analysis performed by a DNA laboratory. *See id.* §§ 411.141(6), (7). “Forensic analysis” is defined as “a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.” *See* Crim. Proc. Code art. 38.35(4); *see*

*also* Gov't Code § 411.141(10) (providing that "forensic analysis" has meaning assigned by Crim. Proc. Code art. 38.35). A "DNA database" means "one or more databases that contain forensic DNA records maintained by the director [of the department]." Gov't Code § 411.141(5); *see id.* § 411.001(3).

The director of the department is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.144(a), 411.142(h) (requiring director to establish standards for DNA analysis). Section 411.144 of the Government Code provides that a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 shall comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C. § 28.82(a). The director of the department has adopted rules that govern the regulation of forensic DNA laboratories in this state. *See* 37 T.A.C. §§ 28.81, 28.82 (describing minimum standards by which a forensic DNA laboratory must abide); *see also* Gov't Code § 411.147(b).

In this instance, we note that a portion of the remaining information consists of DNA records and information relating to DNA analysis of samples collected under subchapter G of chapter 411 of the Government Code. We assume that the information at issue is the result of forensic DNA analysis performed by a DNA laboratory in accordance with department regulations. Thus, based on our review of the information at issue, we conclude that the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code.<sup>2</sup>

We also note that some of the remaining information is subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 411.153 of the Government Code. The department must also withhold the Texas

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<sup>2</sup>We note that section 411.147 of the Government Code allows the director of the department to release DNA samples in certain instances. *See* Gov't Code § 411.147(c).

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining submitted information must be released.<sup>4</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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<sup>4</sup>We note that the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/eeg

Ref: ID# 306250

Enc. Submitted documents

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(w/o enclosures)