



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2009

Ms. Myrna Reingold
Galveston County
Legal Department
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2009-10260

Dear Ms. Reingold:

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# 349970.

Galveston County (the "county") received a request for "purchase orders, invoices, statements, receipts, and other backup documents relating to" eight specified expenditures of the Galveston County District Attorney's Office (the "district attorney"). You state the county has released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.1175, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 411.153 of the Government Code, which provides:

- (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under the public information law, Chapter 552.

¹Although you also claim section 552.117, because the individuals at issue are employed by the district attorney, section 552.1175 is the proper exception to raise for the information at issue.

(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 of Public Safety]." Gov't Code § 411.141(5); *see id.* § 411.001(3).

You argue the record you have marked relates to a DNA analysis that "was conducted for determining the connection of the evidence to a criminal action[,] and the information is related to a DNA analysis of a sample collected under Subchapter G of Chapter 411 of the Government Code." Upon review, we agree the information you have marked is related to a DNA analysis of a sample collected under section 411.153(b). Accordingly, the county must withhold the information you have marked under section 552.101 in conjunction with section 411.153 of the Government Code.²

Next, section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

...

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may

²As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(5), (b). You state you have marked the home addresses of several district attorney employees. Based on your representation and our review, the county must withhold the home addresses you have marked under section 552.1175 to the extent the individuals at issue elect to restrict access to the marked information in accordance with section 552.1175(b).

Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Therefore, the county must withhold the partial credit card numbers you have marked under section 552.136 of the Government Code.

Finally, section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). We note the types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Further, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We agree the e-mail address you have marked must be withheld under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consented to its disclosure.

In summary, (1) the county must withhold the information you have marked under section 552.101 in conjunction with section 411.153 of the Government Code; (2) the county must withhold the home addresses you have marked under section 552.1175 of the Government Code to the extent the individuals at issue elect to restrict access to the marked information in accordance with section 552.1175(b); (3) the county must withhold the partial credit card numbers you have marked under section 552.136 of the Government Code; and (4) the county must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consented to its disclosure. The remaining information must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 349970

Enc. Submitted documents

c: Requestor
(w/o enclosures)