



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2010

Mr. Gerard A. Calderon
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2010-03578

Dear Mr. Calderon:

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# 373006.

The Bexar County Sheriff's Department (the "sheriff") received a request for several categories of information regarding a specified incident. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted documents include a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that the attorney general shall make the custodial death report available to any interested person, with the exception of any portion of the report that the attorney general determines is privileged. *See* Code Crim. Proc. art. 49.18(b). The report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The attorney general has determined that the four-page report and

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

summary must be released to the public but that any other documents submitted with the revised report are confidential under article 49.18(b). The sheriff must release the submitted custodial death report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure. We note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

Next, we note the remaining information consists of a completed report that is subject to section 552.022 of the Government Code. Section 552.022(a)(1) of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Therefore, the sheriff may only withhold the submitted completed report if it is subject to section 552.108 or confidential under "other law." Section 552.103 is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the remaining information may not be withheld under this exception. However, because information subject to section 552.022(a)(1) may be withheld under section 552.101 of the Government Code, we will address the applicability of that exception to the remaining information.²

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. This section encompasses information protected by other statutes, including section 411.083 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. 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 deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, 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. Furthermore, any CHRI obtained from

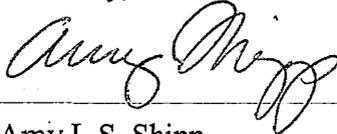
²The Office of the Attorney General will raise a mandatory exception like section 552.101 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). The information that we have marked is confidential under chapter 411 and must be withheld under section 552.101 of the Government Code. As you raise no further exceptions to 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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 373006

Enc. Submitted documents

cc: Requestor
(w/o enclosures)