



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-06823

Dear Ms. Cohen:

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# 379134 (ORA # 10-0417).

The Texas Department of Public Safety (the "department") received a request for the DNA profile of a named individual. 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.

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. Section 411.153 of the Government Code provides in pertinent part that a "DNA record stored in the DNA database is confidential and is not subject to disclosure under [the Act]." Gov't Code § 411.153(a). "DNA record" means "the results of a forensic DNA analysis performed by a DNA laboratory and, if known, the name of the person who is the subject of the analysis." *Id.* § 411.141(4).

Section 411.147 of the Government Code governs access to DNA database information and provides in part:

(c) The director may release a DNA sample, analysis, or record only:

(1) to a criminal justice agency for criminal justice or law enforcement identification purposes;

(2) for a judicial proceeding, if otherwise admissible under law;

(3) for criminal defense purposes to a defendant, if related to the case in which the defendant is charged or released from custody under Article 17.47, Code of Criminal Procedure, or other court order; or

(4) for another purpose:

(A) described in Section 411.143; or

(B) required under federal law as a condition for obtaining federal funding.

Id. § 411.147(c); *see also* 37 T.A.C. § 28.24 (regulation regarding release of information associated with DNA database).

The department states that the DNA record of the named individual relates to a sample collected under subchapter G of chapter 411 of the Government Code. The department further states that the record in question is the result of forensic DNA analyses performed by a DNA laboratory in accordance with department regulations. Thus, the information at issue is subject to section 411.153 of the Government Code. However, in this instance, the requestor states that the requested DNA record is related to a pending criminal case in which his office represents the defendant. The requestor explains that he needs the DNA record at issue for his client's criminal defense. The requestor informs us that the information at issue is "related to the underlying offense in this matter, and is critical to the preparation of the Defendant's case." The requestor further explains that "[b]ased on counsel's investigation in this matter, [the named individual] is a potential suspect in the underlying offense." The requestor states that the named individual's DNA record is needed for comparison to unidentified DNA collected in connection with the offense for which his client is charged. We note that the department does not refute the representations by the requestor that the DNA record at issue is related to the defense of his client's case.

Upon review, we agree that the DNA record at issue is confidential under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code. However, based on the representations made by the requestor, we conclude that the department has the discretion to release the DNA record at issue to this requestor pursuant to section 411.147(c)(3).

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,

A handwritten signature in black ink, appearing to read "T Wilcox". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 379134

Enc. Submitted documents

c: Requestor
(w/o enclosures)