



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2010

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2010-07723

Dear Ms. Lentz:

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# 380932.

The Williamson County Sheriff's Office (the "sheriff") received a request for the results of a background check on the requestor performed as part of the sheriff's application process. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except 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. Similarly, any CHRI obtained from 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). Upon review, we find the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.¹ However, the remaining information you seek to withhold does not constitute CHRI for purposes of chapter 411, and the sheriff may not withhold this information on that basis.

We note section 552.1175 of the Government Code is applicable to portions of the remaining information.² Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(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 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), (b). The remaining information contains the home address and cellular telephone number of a police officer not employed by the sheriff. Section 552.1175

¹We note an individual can obtain his own CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

²The 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).

encompasses a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his personal funds. You do not inform this office, nor does any of the submitted information indicate, whether the officer at issue has elected to keep this information confidential in accordance with subsections 552.1175(b)(1) and (2). Accordingly, if the officer elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the sheriff must withhold the information we have marked under section 552.1175. However, the sheriff may only withhold the marked cellular telephone number if the officer at issue paid for the cellular telephone service with personal funds. If no election is made, the sheriff may not withhold the marked information under section 552.1175 of the Government Code, and it must be released to the requestor.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address you have marked is not of a type specifically excluded by section 552.137(c). Thus, unless the sheriff receives consent for its release, you must withhold the e-mail address you have marked under section 552.137 of the Government Code.³

In summary, the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The sheriff must withhold the information we have marked under section 552.1175 of the Government Code if the officer elects to restrict access to this information in accordance with section 552.1175(b). However, the sheriff may only withhold the marked cellular telephone number if the officer at issue paid for the cellular telephone service with personal funds. Unless the sheriff receives consent from the owner of the marked e-mail address to release this information, the sheriff must withhold the e-mail address you have marked under section 552.137. The remaining information must be released.

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

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 that reads "Lauren J. Holmsley". The signature is written in a cursive style with a large, looping 'L' and 'H'.

Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 380932

Enc. Submitted documents

c: Requestor
(w/o enclosures)