



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2010

Mr. Brett Norbraten
Open Records Attorney
Texas Department of Aging and Disability Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2010-07968

Dear Mr. Norbraten:

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# 379730 (DADS Tracking No. 2010SOLEG0032).

The Texas Department of Aging and Disability Services (the "department") received a request for all results of fingerprint background reports for state-supported living center employees; a list of employees' convictions, including dates; and a list of employees who have been barred from five years of employment with the agency or any other category. 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 representative sample of information.¹

Section 552.101 of the Government Code 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. Chapter 411 authorizes the Texas Department of Public Safety (the "DPS") to compile and maintain criminal history record information ("CHRI") from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history

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.

records. *See id.* §§ 411.042, .087. CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2).

In 2007, the 81st Legislature enacted section 411.0845 of the Government Code, which provides in relevant part:

(a) [DPS] shall establish an electronic clearinghouse and subscription service to provide criminal history record information to a particular person entitled to receive criminal history record information and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for criminal history record information from a person entitled to such information under this subchapter, [DPS] shall provide through the electronic clearinghouse:

(1) the criminal history record information reported to [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any criminal history record information reported to [DPS] or the Federal Bureau of Investigation.

...

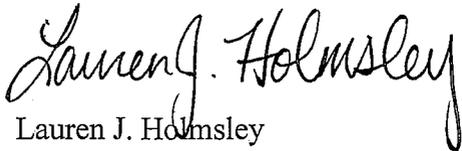
(d) [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain criminal history record information under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Pursuant to section 411.1144 of the Government Code, the department is authorized to obtain this CHRI from DPS. *See id.* § 411.1144. You inform us that the department subscribes to the electronic clearinghouse, and state that the information at issue was compiled from clearinghouse reports transmitted to the department. Based on your representations and our review, we find that the information we have marked is confidential under section 411.0845 of the Government Code and must be withheld under section 552.101 of the Government Code. However, the department has failed to demonstrate how the remaining information at issue constitutes confidential criminal history record information obtained from the clearinghouse reports, and this information may not be withheld under section 552.101 on that basis. As you raise no other exceptions to disclosure, 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 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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 379730

Enc. Submitted documents

c: Requestor
(w/o enclosures)