ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2010

Ms. Cynthia Tom
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-001

OR2010-14205

Dear Ms. Tom:

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# 394376 (ORA # 10-1550).

The Texas Department of Public Safety (the "department") received a request for reports by two department crime lab employees related to a specified matter. 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 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 exception encompasses information that other statutes make confidential. You contend the requested information is confidential under section 411.153 of the Government Code, which provides as follows:

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

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

The director of the department is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.144(a), .142(h) (requiring director to establish standards for DNA analysis). Section 411.144 of the Government Code provides that a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 shall comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C § 28.82(a). The director has adopted rules that govern the regulation of forensic DNA laboratories in this state. *See* 37 T.A.C. §§ 28.81, .82 (describing minimum standards by which a forensic DNA laboratory must abide); *see also* Gov't Code § 411.147(b).

You inform us that the requested document is a DNA record relating to forensic analysis of DNA samples collected under subchapter G of chapter 411 of the Government Code. The submitted document is related to a criminal case. You further inform us that the department's crime laboratories operate pursuant to rules governing forensic DNA labs in accordance with department regulations. Based on your representations and our review, we agree the submitted information consists of a DNA record that is confidential under section 411.153 of the Government Code. You do not indicate, and it does not otherwise appear, the submitted information is subject to release to this requestor under section 411.147(c) of the Government Code. *See id.* § 411.147(c) (listing instances in which department may release a DNA sample, analysis, or record). Accordingly, the department must withhold the submitted information under section 552.101 in conjunction with section 411.153 of the Government Code.

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,

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 394376

Enc. Submitted documents

c: Requestor
(w/o enclosures)