



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 4, 2010

Mr. Michael J. Sandlin  
Assistant District Attorney  
Dallas County Criminal District Attorney's Office  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2010-15071

Dear Mr. Sandlin:

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# 395558.

The Dallas County District Attorney's Office (the "district attorney") received a request for all statistics, including several specified types of information, pertaining to jury trials, non-jury trials, and plea bargains in the Organized Crime Division/Drug Court during a specified time period. You state the district attorney does not have any information responsive to some of the types of information specified in the request.<sup>1</sup> You claim the remaining 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.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, you indicate some of the requested information may not be responsive to the request. This decision does not address the public availability of any non-responsive information, and that information need not be released.

Next, you state the district attorney does not maintain the requested information in statistical form. The Act does not require a governmental body to make available information that did not exist when the request was received, nor does it require a governmental body to compile information or prepare new information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. See Open Records Decision No. 561 at 8-9 (1990). We assume the district attorney has made a good-faith effort to do so.

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 laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) 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.* Although you generally claim the requested information is CHRI confidential under state and federal law, you have not provided any arguments explaining how the requested information constitutes CHRI. Furthermore, none of the information was generated by the NCIC or TCIC. Accordingly, we find you have failed to demonstrate how any portion of the remaining information constitutes CHRI for purposes of chapter 411 or federal law, and no portion of this information may be withheld on this basis.

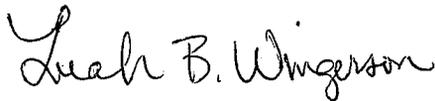
Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy

interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You indicate the requested information should be withheld in its entirety under common-law privacy because the information constitutes compiled criminal history information. You have not, however, provided any comments explaining how the information is compiled criminal history information protected by common-law privacy. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Furthermore, the request is for certain information pertaining to specified offenses. Therefore, we find the requestor is not asking the district attorney to compile individuals' criminal histories. Consequently, you have failed to demonstrate the applicability of common-law privacy to the requested information, and the information may not be withheld on that basis. As you have claimed no other exceptions to disclosure, the requested 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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 395558

Enc. Submitted documents

c: Requestor  
(w/o enclosures)