



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 10, 2011

Ms. Michelle M. Fraga  
Assistant County Attorney  
County of Harris  
1019 Congress, Suite 1500  
Houston, Texas 77002

OR2011-00505

Dear Ms Fraga:

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# 405496.

The Harris County Sheriff's Office (the "sheriff") received a request for a named employee's complete personnel file. You state the sheriff has released some of the requested information. You claim the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold the submitted internal affairs investigation reports under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming sections 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of

crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, at 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The internal affairs investigation reports at issue are personnel documents maintained by the sheriff for administrative purposes. You have not explained, and the reports do not reflect, that the internal administrative investigations resulted in criminal investigations or prosecutions. Accordingly, you have failed to demonstrate that section 552.108 applies to these reports. Thus, the sheriff may not withhold any portion of the submitted internal affairs investigation reports under section 552.108(a)(2).

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. Section 552.101 encompasses information made confidential by other statutes, including section 1324a of title 8 of the United States Code, which provides an Employment Eligibility Verification Form I-9 and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The submitted information includes a federal I-9 form. Release of this form in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form, which we have marked, is confidential pursuant to section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information in accordance with 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *See 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. Furthermore, 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. We note that section 411.083 does not apply to active

warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we conclude that the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find the remaining information you seek to withhold on this basis does not constitute CHRI for the purposes of chapter 411 of the Government Code. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See Gov't Code* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information in this instance. Therefore, the sheriff must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code, which governs access to medical records. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision* Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released on the patient's signed, written consent, provided that the consent specifies the (1) information to be covered by the release, (2) reasons or purposes for the release, and (3) person to whom the information is to be released. *See Occ. Code* §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); ORD 565 at 7. We conclude the information we have marked constitutes medical records

that may only be disclosed in accordance with the MPA. The sheriff must withhold this information under section 552.101 in conjunction with the MPA.

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which provides the following:

(a) [Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE")] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Upon review, we find the sheriff must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we have marked under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the TCLEOSE. Section 1701.454 provides as follows:

(a) A report or statement submitted to the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this section, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the

[TCLEOSE] employee having the responsibility to maintain the report or statement and only if:

- (1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and
- (2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the [TCLEOSE] that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

*Id.* § 1701.454. The submitted information includes F-5 Report of Separation of License Holder forms. In this instance, the named employee did not resign due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff must withhold the F-5 forms we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

*Id.* § 1703.306. A portion of the remaining information, which we have marked, consists of information acquired from polygraph examinations subject to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the sheriff must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

The submitted information includes an ST-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the entity with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the sheriff with the information specified in section 550.065(c)(4). Therefore, the sheriff must withhold the submitted ST-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

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). However, there is a legitimate public interest in an applicant's background and qualifications for government employment, especially where the

applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). Although the remaining information contains a criminal history compilation, this information was obtained by the sheriff in the context of hiring a peace officer. Therefore, this information is of legitimate public interest and may not be withheld under section 552.101 on the basis of common-law privacy.

This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Additionally, the identity of a victim of alleged sexual harassment is confidential under common-law privacy. *See Ellen*, 840 S.W.2d 519. Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public concern. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

You claim portions of the remaining information are excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue,

we have marked the information that must be withheld under section 552.102(a) of the Government Code. The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

You assert portions of the remaining information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994); see also Open Records Decision No. 670 at 6 (2001) (determining that a governmental body may withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision).* We note section 552.117(a)(2) of the Government Code is applicable to a peace officer's cellular telephone number or pager number only if the cellular telephone service or pager service is paid for by the officer with his or her own funds. *See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile numbers paid for by governmental body and intended for official use).* We also note this section does not apply to an individual's work telephone number. In this instance, the employee named in the request is no longer employed by the sheriff, and it is unclear whether this person is currently a licensed peace officer as defined by article 2.12. It is also unclear as to whether the other employee whose information is at issue is currently a licensed peace officer. Accordingly, if these individuals are currently licensed peace officers as defined by article 2.12, then the sheriff must withhold the information we have marked under section 552.117(a)(2). However, the sheriff may only withhold the marked personal cellular telephone numbers if the cellular service was paid for with personal funds.

If the individuals whose information is at issue are no longer licensed peace officers, then the personal information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See Gov't Code § 552.117(a)(1).* Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989).* Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. In this instance, the submitted information indicates that the employee named in the request timely elected confidentiality for his home address and telephone number. Therefore, the sheriff must withhold this information, which we have marked, under section 552.117(a)(1). To the extent the former employee timely requested confidentiality

under section 552.024 for his family member information and his social security number, the sheriff must also withhold this information, which we have marked, under section 552.117(a)(1). To the extent the other employee timely requested confidentiality under section 552.024 for his personal information, the sheriff must withhold this information, which we have marked, under section 552.117(a)(1). Conversely, to the extent the individuals at issue did not make a timely election under section 552.024 for their personal information, the sheriff may not withhold the remaining marked personal information under section 552.117(a)(1).<sup>1</sup> As previously noted, the sheriff may only withhold a cellular telephone or pager number if the cellular telephone and pager service was paid for with the employee's own funds. Upon review, we find the remaining information you have marked does not constitute the personal information of any current or former employee of the sheriff. Accordingly, the sheriff may not withhold any of the remaining information under section 552.117 of the Government Code.

The remaining documents contain information pertaining to peace officers who are not employed by the sheriff. Section 552.1175 of the Government Code provides in pertinent part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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(b). We have marked the information that is subject to section 552.1175. If these individuals are currently peace officers and elect to restrict access to this information in accordance with section 552.1175, the sheriff must withhold the information we have marked. Otherwise, this information must be released.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information, except to note that regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

state [or] a motor vehicle title or registration issued by an agency of this state.”<sup>2</sup> *Id.* § 552.130(a)(1), (2). Therefore, the sheriff must withhold the marked Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136; *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are “access device” numbers for purposes of section 552.136. Accordingly, the sheriff must withhold the insurance policy, bank account, and bank routing numbers we have marked under section 552.136 of the Government Code.

In summary, the sheriff must withhold under section 552.101 of the Government Code (1) the I-9 form we have marked in conjunction with section 1342a of title 8 of the United States Code; (2) the CHRI we have marked in conjunction with chapter 411 of the Government Code; (3) the fingerprints we have marked in conjunction with section 560.003 of the Government Code; (4) the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we have marked in conjunction with section 1701.306 of the Occupations Code; (5) the F-5 forms we have marked in conjunction with section 1701.454 of the Occupations Code; (6) the polygraph information we have marked in conjunction with section 1703.036 of the Occupations Code; and (7) the ST-3 accident report in conjunction with section 550.065(b) of the Transportation Code. The marked medical records may only be released in accordance with the MPA. The sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.102 of the Government Code. If the former employees are currently licensed peace officers, the sheriff must withhold the personal information we have marked, under section 552.117(a)(2) of the Government Code. If the former employees are no longer licensed peace officers, then the sheriff must withhold the named employee’s home address and telephone number under section 552.117(a)(1), and also, to the extent the named employee timely requested confidentiality under section 552.024 for his family member information and social security number and to the extent the other employee timely requested confidentiality for his personal information, the sheriff must withhold the remaining information we marked under section 552.117(a)(1) of the Government Code. However, the sheriff may only withhold the marked cellular telephone numbers if the individual at issue paid for the cellular telephone with personal funds. To the extent the individuals whose information we have marked are still licensed peace officers who elect to restrict access to their information, the sheriff must withhold this information under section 552.1175 of the Government Code. The sheriff must also withhold the Texas motor vehicle record

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<sup>2</sup>The 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).

information we have marked under section 552.130 of the Government Code and the insurance policy, bank account, and bank routing numbers we have marked under section 552.136 of the Government Code.<sup>3</sup> 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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 405496

Enc. Submitted documents.

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We 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: I-9 forms under section 1342a of title 8 of the United States Code; a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code; Texas license driver's license and license plate numbers and a copy of a Texas driver's license under section 552.130 of the Government Code; and insurance policy, bank account, and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.