



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 30, 2011

Ms. Myrna S. Reingold  
Galveston County  
722 Moody, 5<sup>th</sup> Floor  
Galveston, Texas 77550

OR2011-04340

Dear Ms. Reingold:

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# 412833.

The Galveston County Sheriff's Office (the "sheriff") received a request for records related to a former employee. You state you have released some of the requested information. You claim that the submitted 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 section encompasses information protected by other statutes, including 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 of part 20 of the Code of Federal Regulations governs the release of CHRI that states 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. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Texas 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. 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 find that some of the submitted information consists of confidential CHRI. Accordingly, the sheriff must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>1</sup> However, none of the remaining information you seek to withhold under this exception constitutes CHRI for purposes of chapter 411. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

The submitted information also contains L-2 and L-2A Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides the following:

(a) [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.

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<sup>1</sup>We note that an individual may obtain his own CHRI from DPS. *See Gov't Code* § 411.083(b)(3).

(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). The sheriff must withhold the submitted L-2, L-2A, and L-3 declaration forms pursuant to section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

The remaining information contains F-5 ("Report of Separation of Licensee") forms submitted to TCLEOSE under chapter J of chapter 1701 of the Occupations Code. The F-5 form is confidential under section 1701.454 of the Occupations Code, which is also encompassed by section 552.101, and provides as follows:

(a) A report or statement submitted to [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 subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

*Id.* § 1701.454. In this instance, it does not appear that the named officer resigned due to a substantiated incident of excessive force or violations of the law other than traffic offenses. Thus, the sheriff must withhold the submitted F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

We note that section 552.023 of the Government Code gives a person or that person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *Id.* § 552.023. However, section 411.083 of the Government Code and sections 1701.306 and 1701.454 of the Occupations Code not only protect the individual's privacy interest, but also protect the interests of the governmental body. Thus, because the records at issue are confidential pursuant to sections 411.083, 1701.306, and 1701.454, the requestor does not have a special right of access to the information at issue under section 552.023. *See id.* § 552.023(b) (governmental body may assert provisions of Act or other law that are not intended to protect person's privacy interests to withhold information to which requestor may otherwise have a special right of access).

In summary, we have marked the CHRI the sheriff must withhold pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff must withhold the submitted L-2, L-2A, and L-3 declaration forms pursuant to section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The submitted F-5 forms must be withheld under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The remaining submitted information must be released.<sup>2</sup>

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 412833

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(b). Because such information is confidential with respect to the general public, if the sheriff receives another request for this information from a person without such right of access, the sheriff should again seek a ruling from this office. *See id.* §§ 552.301, .302.