



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2011

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2011-11480

Dear Ms. Lentz:

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# 426376.

The Williamson County Sheriff's Office (the "sheriff") received a request for a named former deputy's personnel file, all documents reviewed by the disciplinary review board concerning this former deputy, the internal affairs department file regarding its investigation into the former deputy, and the sheriff's policies and procedures regarding termination appeals of law enforcement officers employed by the sheriff, as well as the sheriff's rules of conduct. You claim portions of the requested information are excepted from disclosure under sections 552.101, 552.130, and 552.151 of the Government Code. We have considered the exceptions 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 laws that make criminal history record

¹We 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.

information (“CHRI”) confidential. CHRI obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under section 552.101 of the Government Code in conjunction with federal and state law. CHRI means “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). We note the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the “DPS”) under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2). Federal regulations prohibit the release to the general public of CHRI maintained in-state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b). The sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. We conclude none of the remaining information at issue is confidential under section 552.101 in conjunction with federal law or subchapter F of chapter 411 of the Government Code, and it may not be withheld on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state, or another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638 § 4 (to be codified as amendments to Gov’t Code § 552.130(a)(1), (2)). You seek to withhold Texas motor vehicle record information in the submitted audio recordings. Section 552.130, however, protects privacy interests. In this instance, some of the information you seek to withhold belongs to the requestor’s client. The requestor has a right of access under section 552.023 of the Government Code to his client’s Texas motor vehicle record information. Gov’t Code § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds information is considered confidential under privacy principles). Consequently, the sheriff may not generally withhold the requestor’s client’s motor vehicle record information in the submitted audio recordings section 552.130 of the Government Code. However, a portion of the information in the audio recordings and in the remaining documents consists of motor vehicle record information of individuals other than the requestor’s client. As you state the sheriff lacks the technical capacity to redact the information at issue from the audio recordings, the sheriff must withhold the audio recordings in their entirety on the basis of section 552.130 of the Government Code. The

sheriff must withhold the motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

You seek to withhold the identifying information of an undercover deputy from the remaining information under section 552.151 of the Government Code, which provides, in part, the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.151. You represent release of the identifying information of the undercover deputy would put the deputy's "life at risk." Based on your representation, we find the sheriff has demonstrated release of the information at issue would subject the deputy to a substantial threat of physical harm. Therefore, we conclude the sheriff must withhold the identifying information of the undercover deputy you have marked under section 552.151.

In summary, the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The sheriff must withhold the submitted audio recordings and the motor vehicle record information we have marked in the submitted information under section 552.130 of the Government Code. The sheriff must withhold the identifying information of the undercover deputy you have marked under section 552.151. The remaining information must be released.²

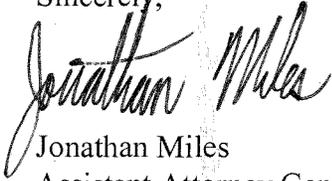
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Accordingly, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 426376

Enc. Submitted documents

c: Requestor
(w/o enclosures)