



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2012

Ms. Katherine Ramos
Assistant Criminal District Attorney
Bexar County Criminal District Attorney's Office
300 Dolorosa Fifth Floor
San Antonio, Texas 78205-3030

OR2012-14986

Dear Ms. Ramos:

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# 467806.

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for information related to two specified criminal cause numbers. You state some of the requested information has been released. You claim 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 information you submitted.

We note the district attorney's office did not comply with its deadline under section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350

(Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You state the district attorney's office received the present request for information on July 20, 2012; therefore, its ten-business-day deadline to request this decision under section 552.301(b) was August 3. The district attorney's office requested this decision by United States mail meter-marked August 7. See Gov't Code § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, the district attorney's office did not comply with section 552.301(b), and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Thus, because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address it.

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 federal and state laws that make criminal history record information ("CHRI") obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center (the "TCIC") confidential. 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). Federal law governs the dissemination of CHRI obtained from the NCIC network. 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 that 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 *id.* § 411.089(b). We have marked CHRI the district attorney's office must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.¹ Although you also seek to withhold the rest of the submitted information on this same basis, we find the remaining information does not consist of CHRI obtained from the NCIC or TCIC networks. We therefore conclude the district attorney's office may not withhold any

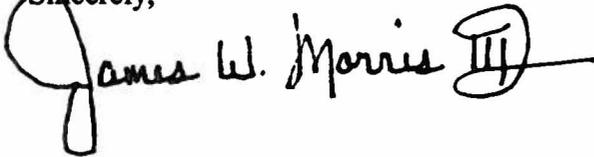
¹We note an individual may obtain his own CHRI from the Texas Department of Public Safety. See Gov't Code § 411.083(b)(3).

of the remaining information under section 552.101 on the basis of federal law or subchapter F of chapter 411 of the Government Code. Thus, as you submitted no other arguments against disclosure, 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 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 "James W. Morris III". The signature is written in a cursive style with a large, looped initial "J" and a distinct "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/eb

Ref: ID# 467806

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²We note the district attorney's office would ordinarily be required to withhold some or all of the remaining information to protect the present requestor's privacy. This requestor has a special right of access, however, to his own private information. See Gov't Code § 552.023(a) ("A person or a person's authorized representative has 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."). Therefore, the district attorney's office may not withhold any of the remaining information from this requestor on privacy grounds. See Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Should the district attorney's office receive another request for these same records from a different requestor, the district attorney's office should resubmit these records and request another decision. See Gov't Code §§ 552.301(a), .302.