



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2013

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2013-13103

Dear Ms. Winn:

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# 494688.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to the requestor's client, including: police reports; specified offense reports; investigative reports and memoranda; photographs including lineups; complaints and witness statements; pre-trial reports and evaluations; post-trial reports and evaluations; pre-sentencing investigation reports; post-sentencing reports; trial and hearing transcripts; and specified correspondence to and from the district attorney's office, including correspondence related to three specified cases involving the requestor's client. You state the district attorney's office has released some of the requested information to the requestor. 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 submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by 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. 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 (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 that the Department of Public Safety (“DPS”) maintains, except that 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. 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 section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement with the criminal justice system. Gov’t Code § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with the criminal justice system). Upon review, we find none of the submitted information consists of confidential CHRI. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses article 42.12 of the Code of Criminal Procedure. Section 9 of article 42.12 is applicable to pre-sentence investigation and post-sentence reports and provides in part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (I) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only:

- (1) to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section;
- (2) pursuant to Section 614.017, Health and Safety Code; or
- (3) as directed by the judge for the effective supervision of the defendant.

Crim. Proc. Code art. 42.12, § 9(j). The submitted documents include a pre-sentence investigation report. Accordingly, the district attorney’s office must generally withhold the

pre-sentence investigation report we have marked under section 552.101 in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure. Upon review, we find the remaining submitted information does not consist of information subject to section 9(j) of article 42.12 of the Code of Criminal Procedure. Accordingly, the none of the remaining submitted information may with withheld under section 552.101 of the Government Code on this basis.

We note the requestor asserts she has a right of access under section 552.023 of the Government Code to the information made confidential pursuant to section 9(j) of article 42.12 of the Code of Criminal Procedure. Section 552.023 provides that a person or person's authorized representative has a special right of access to information protected from public disclosure by laws intended to protect that person's privacy interests. *See Gov't Code* § 552.023; *see also id.* §552.229 (stating that a written and signed form is required for release of information under section 552.023). We note, however, that section 9(j) of article 42.12 of the Code of Criminal Procedure has its own release provisions. Thus, the district attorney's office may disclose the information at issue only in accordance with these release provisions. *See* *Crim. Proc. Code art. 42.12, § 9(j)*. We find the requestor has failed to demonstrate any such release provisions are applicable in this instance. Accordingly, the information we have marked under section 9(j) of article 42.12 of the Code of Criminal Procedure must be withheld under section 552.101 of the Government Code. As you raise no additional exceptions to disclosure, the district attorney's office must release the remaining submitted information to the requestor.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 494688

Enc. Submitted documents

c: Requestor
(w/o enclosures)