



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 16, 2017

Mr. Daniel W. Ray  
Counsel for Hunt County  
Scott, Ray & Sullivan, P.L.L.C.  
P.O. Box 1353  
Greenville, Texas 75403

OR2017-10484

Dear Mr. Ray:

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# 658039.

Hunt County (the "county"), which you represent, received a request for all records pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

The submitted information contains fingerprints, the public availability of which is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 of the Government Code provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). In this instance, the

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<sup>1</sup>Although you also raise sections 552.103 and 552.108 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume that you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, 552.302.

submitted information contains the requestor's client's fingerprints. Thus, this requestor has a right of access to her client's fingerprint under section 560.002(1)(A). Although you raise section 552.101 in conjunction with common-law privacy for this information, we note statutory access provisions generally prevail over the common law. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when it directly conflicts with common-law principle). Therefore, the county must release the requestor's client's fingerprints to her pursuant to section 560.002 of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under 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). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. 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, or subchapter E-1, 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). Thus, 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. We note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See id.* § 411.081(b). We also note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). You assert section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for the remaining information. Upon review, we find some of the remaining information, which we have marked, contains CHRI which the county must generally withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

However, we note the requestor is a representative of the Regional Public Defender for Capital Cases (the "public defender"). Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender's office are entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a criminal case in which an attorney compensated . . . by the public defender's office has been appointed.

*Id.* § 411.1272. "Public defender's office" has the meaning assigned by article 26.044(a) of the Code of Criminal Procedure. *Id.* § 411.082(6); *see also* Crim. Proc. Code art. 26.044(a)(4). In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). "Criminal history record information" ("CHRI") is defined as "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." *See id.* § 411.082(2).

Accordingly, the requestor is authorized to obtain the CHRI in the submitted information from the county pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender is appointed. *See id.* §§ 411.087(a)(2), .1272. Therefore, if the county determines the information at issue relates to a criminal case in which an attorney compensated by the public defender is appointed, then the county must release the information we have marked pursuant to sections 411.087(a)(2) and 411.1272. If the county determines the information at issue does not relate to a criminal case in which an attorney compensated by the public defender is appointed, then the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary, if the county determines the information at issue relates to a criminal case in which an attorney compensated by the public defender is appointed, then the county must release the information we have marked pursuant to sections 411.087(a)(2) and 411.1272. If the county determines the information at issue does not relate to a criminal case in which

an attorney compensated by the public defender is appointed, then the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The county must release the remaining information.<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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 658039

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 the information being released in this instance, including the requestor's client's date of birth, social security number, and motor vehicle record information. Thus, the county must again seek a decision from this office if it receives another request for the same information from another requestor.