



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2017

Ms. Jelain Chubb
Director, ARIS Division and State Archivist
Texas State Library and Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2017-20823

Dear Ms. Chubb:

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# 675134 (2017PIA050 & TDCJ#AL0050).

The Texas State Library and Archives Commission (the "commission") received a request for historical files pertaining to nine death row inmates. You state the Texas Department of Criminal Justice (the "department") seeks to withhold the submitted information.¹ We have received arguments from the department. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

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 federal and state laws that make criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center confidential. CHRI means "information collected

¹We note the commission did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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 §§ 411.081-.1409. 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 E-1 or F of the Government Code. *See* Gov’t Code § 411.083(a). 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. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. The department asserts some of the submitted information consists of CHRI for purposes of chapter 411. Based on this representation and our review, we find the commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. As no further exceptions to disclosure are raised, the commission must release the remaining information.

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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 675134

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)