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ATTORNEY GENERAL OF TEXAS

January 21, 2020

Ms. Lauren Downey  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
Post Office Box 12548  
Austin, Texas 78711-2548

OR2020-01888

Dear Ms. Downey:

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# 807266 (PIR# R002637).

The Office of the Attorney General (the "OAG") received a request for information pertaining to a specified criminal case involving a named individual. The OAG states it will release most of the requested information with redactions allowed by law. The OAG claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 411.153(a) of the Government Code, which provides "[a] DNA record stored in the DNA database is confidential and is not subject to disclosure under the [Act]." *Id.* § 411.153(a). A "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. *See*

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<sup>1</sup> We 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 that those records contain substantially different types of information than that submitted to this office.

*id.* § 411.141(6)-(7). “Forensic analysis” is defined as “a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.” Crim. Proc. Code art. 38.35(4); *see also* Gov’t Code § 411.141(10) (“forensic analysis” has meaning assigned by article 38.35). A “DNA database” means “one or more databases that contain forensic DNA records maintained by the director of [the Department of Public Safety (“DPS”).” Gov’t Code § 411.141(5); *see id.* § 411.001(3).

The director of DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.142(h) (requiring director establish standards for DNA analysis), .144(a). Section 411.144 of the Government Code provides a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 shall comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C. §§ 28.81, .82 (describing minimum standards by which forensic DNA laboratory must abide); *see also* Gov’t Code § 411.147(b).

The OAG states the information it marked consists of records relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. The OAG further notes this information is the result of forensic DNA analyses performed by a DNA laboratory in accordance with DPS regulations. Therefore, the OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 411.153(a) of the Government Code. *See City of Fort Worth v. Abbott*, 258 S.W.3d 320, 328 (Tex. App.—Austin 2008, no pet.) (section 411.153 prohibits release of DNA records held by city forensic science laboratory regardless of whether records have been forwarded to DPS state DNA database).

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a), (b). Upon review, we find the information at issue was acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, the OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.1085 of the Government Code provides, in pertinent part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). The OAG states the information it marked under section 552.1085(c) consist of sensitive crime scene images that were taken at a crime scene as part of a criminal case that is now closed. Upon review, we agree the information at issue consists of sensitive crime scene images for the purposes of section 552.1085 of the Government Code. Therefore, the OAG must withhold the information it indicated under section 552.1085(c) of the Government Code.

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, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> *See id.* § 552.130. Accordingly, the OAG must withhold the motor vehicle record information in the remaining information under section 552.130 of the Government Code.

In summary, the OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 411.153(a) of the Government Code. The OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The OAG must withhold the information it indicated under section 552.1085(c) of the Government Code. The OAG must withhold the motor vehicle record information in the remaining information under section 552.130 of the Government Code. The OAG 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.

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<sup>2</sup>This office will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 807266

Enc. Submitted documents

c: Requestor  
(w/o enclosures)