



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2020

Mr. Trey Brown
Assistant District Attorney
Johnson County
204 South Buffalo, Suite 209
Cleburne, Texas 76033

OR2020-06414

Dear Mr. Brown:

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# 814307.

The Johnson County Sheriff's Office (the "sheriff's office") received a request for DNA records pertaining to a named individual.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the sheriff's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to subsection 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The sheriff's office states it received the request for information on December 4, 2019. Accordingly, the sheriff's office was required to provide the information required by subsection 552.301(e) by December 18, 2019. As of the date of this letter, the sheriff's office has not submitted to this office a copy of the written request

¹ As you have not submitted a copy of the request for information, we take our description of the requested information from your brief.

for information. Consequently, we find the sheriff's office failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The sheriff's office claims sections 552.101 and 552.103 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this section for the submitted information. However, we find you have failed to establish a compelling reason to address the remaining exception you claim.

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 section encompasses information protected by other statutes, such as 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 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 Texas Department of Public Safety (the “DPS”)]”. *Id.* § 411.141(5); *see id.* § 411.001(3).

The director of the 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).

Upon review, we find the submitted information consists of records relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. We further note this information is the result of forensic DNA analyses performed by a DNA laboratory in accordance with DPS regulations. Therefore, the sheriff's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 411.153(a) of the Government Code.² *See City of Fort Worth v. Abbott*, 258 S.W.3d 320, 328 (Tex. App.—Austin 2008, no pet.) (section 411.153 prohibits

² As our ruling is dispositive, we need not address your arguments against disclosure of the submitted information.

release of DNA records held by city forensic science laboratory regardless of whether records have been forwarded to DPS state DNA database).

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 <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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/be

Ref: ID# 814307

Enc. Submitted documents

c: Requestor
(w/o enclosures)