



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 29, 2020

Mr. Jeffrey C. Monk  
Administration Manager  
City of Houston  
1200 Travis  
Houston, Texas 77002-1600

OR2020-14954

Dear Mr. Monk:

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# 832726 (ORU #20-03606).

The Houston Police Department (the "department") received a request for the personnel file of 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.

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. Section 552.101 encompasses 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." Gov't Code § 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 section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked consists of CHRI the department must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.<sup>1</sup> However, you have failed to demonstrate the remaining information at issue consists of CHRI for section 411.083 purposes. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides, in relevant part, the following:

(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 other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a)(1). Upon review, we find Exhibit C constitutes information acquired from a polygraph examination. However, in this instance, the requestor is the polygraph examinee. Thus, the department has the discretion to release the polygraph information at issue pursuant to section 1703.306(a)(1) of the Occupations Code. *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, examination results to be disclosed to examinees). Otherwise, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department has the discretion to release the polygraph information at issue pursuant to section 1703.306(a)(1) of the Occupations Code; otherwise, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code. The remaining information must be released.<sup>2</sup>

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<sup>1</sup>We note the requestor can obtain his CHRI from DPS. Gov't Code § 411.083(b)(3).

<sup>2</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). Thus, if the department receives another request

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,

Melanie Villars  
Assistant Attorney General  
Open Records Division

MJV/rm

Ref: ID# 832726

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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for the same information from a different requestor, the department must again seek a decision from this office.