



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2020

Mr. Carlos G. Madrid
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2020-28125

Dear Mr. Madrid:

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# 853290 (ORR# 492-20-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual. The sheriff's office claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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. This section encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 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, but 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 agree the sheriff's office must withhold the information it has indicated under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.¹

Section 552.101 of the Government Code also encompasses section 236.6 of title 8 of the Code of Federal Regulations, which protects information regarding detainees held on behalf of the Department of Homeland Security (the "DHS").² This section provides as follows:

No person, including any state or local government entity . . . , that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6; *see also id.* § 1.2 (defining Service as "U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears"). We note some of the remaining information, which we have marked, pertains to a detainee for purposes of section 236.6. Upon review, we conclude the sheriff's office is required to abide by rules promulgated by the DHS with regard to the detainee. *See id.* § 2.1 (providing that Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government's exclusive and expressed interest in regulating aliens). Therefore, this information is made confidential by section 236.6 of title 8 of the Code of Federal Regulations. Accordingly, the sheriff's office must withhold the information we have

¹ We note individuals and their authorized representatives may obtain their own criminal record history information from DPS. *See* Gov't Code § 411.083(b)(3).

² We note the functions of the Immigration and Naturalization Service ("INS") were transferred to DHS on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

marked under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code (Secretary of Homeland Security shall establish regulations necessary to carry out laws relating to immigration and naturalization) and section 236.6 of title 8 of the Code of Federal Regulations.

In summary, the sheriff's office must withhold the information it has indicated under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff's office must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code (Secretary of Homeland Security shall establish regulations necessary to carry out laws relating to immigration and naturalization) and section 236.6 of title 8 of the Code of Federal Regulations. The sheriff's office 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 <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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 853290

Enc. Submitted documents

c: Requestor
(w/o enclosures)