



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 14, 2022

Ms. Lindsey Bartula  
Associate General Counsel  
The University of North Texas System  
1901 Main Street, 7<sup>th</sup> Floor  
Dallas, Texas 75201

OR2022-17132

Dear Ms. Bartula:

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# 953301 (ORR# 3183).

The University of North Texas Health Science Center (the "university") received a request for ten categories of information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.

Initially, we note the university has not submitted information responsive to all the categories of information to which the requestor seeks access. Although the university states it has submitted a representative sample of the requested information, we find the submitted information is not representative of all of the types of information at issue. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the university to withhold any information that is substantially different from the types of information the university submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any such information existed on the date the university received the request, we assume the university has released it. If the university has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

concludes no exceptions apply to requested information, it must release information as soon as possible).

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 section 411.153 of the Government Code, which provides as follows:

- (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under [the Act].
- (b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.
- (c) An offense under this section is a state jail felony.
- (d) A violation under this section constitutes official misconduct.

*Id.* § 411.153. 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.” *See* Crim. Proc. Code art. 38.35(4); *see also* Gov’t Code § 411.141(10) (providing that “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).

Upon review, we find portions of the submitted information, which we have marked, consist 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. Accordingly, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.153(a) of the

Government Code.<sup>1</sup> *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 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.182(a) of the Government Code provides in relevant part, “information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.” Gov’t Code § 418.182(a). The fact that information may be related to a security system does not make the information *per se* confidential under section 418.182. *See Open Records Decision No. 649 at 3* (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See Gov’t Code § 552.301(e)(1)(A)* (governmental body must explain how claimed exception to disclosure applies).

You state the remaining information consists of a floor plan of the Center for Human Identification on the university’s Health Science Center campus. You state the release of this information would allow wrongdoers to anticipate weaknesses in the university’s security system and jeopardize the safety of the university community. Upon review, we find the information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Accordingly, the university must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

In summary, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.153(a) of the Government Code. The university must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

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>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. Further, although the requestor is a representative of the Office of the Regional Public Defender for Capital Cases, we note the submitted information does not contain CHRI. Thus, we do not address whether the requestor has a right of access to CHRI in this information pursuant to sections 411.1272 and 411.087(a)(2) of the Government Code. *See Gov’t Code § 411.1272; see also id. § 411.087(a)(2)*.

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,

Colin Henry  
Attorney  
Open Records Division

CEH/be

Ref: ID# 953301

Enc. Submitted documents

c: Requestor  
(w/o enclosures)