ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2005

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Civil Section
300 Dolorosa, Suite 4049
San Antonio, Texas 78205

OR2005-07242

Dear Ms. Dye:

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# 230016.

The Bexar County Crime Laboratory (the "county") received a request for "the results of [the] DNA report of" a named individual. You claim that the requested 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 411.153(a) of the Government Code provides that "[a] DNA record stored in the DNA database is confidential and is not subject to disclosure under the open records law, Chapter 552 [of the Government Code]." Gov't Code § 411.153(a). "'DNA database' means the database that contains forensic DNA records maintained by the [public safety] director." Gov't Code § 411.141(2); *see id.* § 411.001(3). The submitted documents constitute DNA records. To the extent the DNA records are maintained in the public safety director's DNA database, the county must withhold the DNA records under section 552.101 in conjunction with section 411.153 of the Government Code. If, on the other hand, the DNA records are not maintained in the public safety director's DNA database, the records

are not confidential under section 411.153 of the Government Code and they must be released to the requestor.[1]

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at(877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

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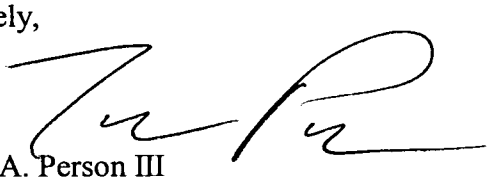
[1]We note that the county does not indicate that the records are otherwise confidential under statutory law. We also note that the submitted documents contain information that may be protected by common-law privacy. However, it appears that the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. If the county receives a future request for this information from an individual other than the requestor or the subject of the information, the county should again seek our decision.

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 230016

Enc. Submitted documents

c: Ms. Juanita Myles
839 Boulder
Universal City, Texas 78148
(w/o enclosures)