



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2009

Ms. Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR2009-05019

Dear Ms. Hibbs:

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# 340284 (TDA-PIR-09-211).

The Texas Department of Agriculture (the "department") received a request for information pertaining to the licensing of and complaints against two named individuals and a named company.¹ You state you have released most of the requested information to the requestor, but 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. This section encompasses information protected by other statutes. Chapter 411 of the Government Code deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice

¹We note that the department asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). 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 deems confidential CHRI that the Texas Department of Public Safety (the “DPS”) maintains, except that the DPS may disseminate CHRI information as provided by subchapter F of chapter 411 of the Government Code: *See* Gov’t Code § 411.083. Subchapter F includes section 411.122 of the Government Code, which provides in part:

(a) Except as provided by Subsection (c)(2), an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that relates to a person who

- (1) is an applicant for a license from the agency;
- (2) is the holder of a license from the agency; or
- (3) requests a determination of eligibility for a license from the agency.

Id. § 411.122(a). Subsection 411.122(d) lists the department as one of the agencies that are authorized to obtain CHRI from the DPS under section 411.122. *See id.* § 411.122(d)(28). You indicate the submitted information is maintained in the department’s pest control licensure files. Based on your representations and our review of the information at issue, we understand that the department obtained the information from the DPS in connection with a licensing matter. We therefore conclude that the submitted information constitutes CHRI that the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.²

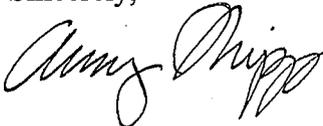
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²We note the requestor can obtain her clients’ CHRI from DPS. Gov’t Code § 411.083(b)(3).

responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Shipp".

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 340284

Enc. Submitted documents

cc: Requestor
(w/o enclosures)