



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2009

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
916 Main Street, Suite 1101
Lubbock, Texas 79401

OR2009-13548

Dear Ms. Clarke:

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# 358255.

The Lubbock County District Attorney's Office (the "district attorney") received a request for all records, reports, correspondence, and summaries of findings of the DNA evidence associated with the exoneration of a named individual. You claim that 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 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 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 public information law, Chapter 552.
- (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 Crim. Proc. Code art. 38.35). A “DNA database” means “one or more databases that contain forensic DNA records maintained by the director [of the Texas Department of Public Safety (the “DPS”)],” *Id.* § 411.141(5); *see id.* § 411.001(3).

The director of the DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.144(a), .142(h) (requiring director to establish standards for DNA analysis). Section 411.144 of the Government Code provides that 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 § 28.82(a). The DPS has adopted rules that govern the regulation of forensic DNA laboratories in this state. *See id.* §§ 28.81, .82 (describing minimum standards by which a forensic DNA laboratory must abide); *see also* Gov’t Code § 411.147(b).

The submitted document is a DNA record relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. The document in question is related to a criminal case. The documents appear to be the result of forensic DNA analyses performed by a DPS DNA laboratory in accordance with DPS regulations. We therefore conclude that the district attorney must withhold the submitted DNA record under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code.¹

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 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

¹We note that section 411.147 of the Government Code allows the director of the DPS to release DNA records in several specified instances. *See* Gov’t Code § 411.147(c).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written in a cursive style.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/eeg

Ref: ID# 358255

Enc. Submitted documents

cc: Requestor
(w/o enclosures)