



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2010

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2010-02060

Dear Ms. Cohen:

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# 369912.

The Texas Department of Public Safety (the "department") received two requests from the same requestor for case identification numbers, item identification numbers, and report dates from certain DNA cases processed by two of the department's crime laboratories during a specified time. You claim 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 representative sample of information.<sup>1</sup>

Initially, we note that these requests are for inventory lists of information derived from DNA reports. You inform the requestor that no such inventories exist. We note that a governmental body is not required to create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). We also note the Act does not require a governmental body to release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). Accordingly, the department need not create the information requested. However, a governmental body must make a good-faith effort to relate a request to

---

<sup>1</sup>We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

responsive information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). You indicate that the submitted reports contain the requested information. Therefore, we consider the department to have made a good-faith effort to identify information that is responsive to these requests.

Next, we note neither of the submitted reports is specifically responsive to the instant requests. The first report was created after the date the department received the request. The second report is from the department's Houston Crime Laboratory and is a DNA record in which there is a match statistic; the request to the Houston Crime Laboratory requested information related to records in which there is no match statistic. However, to the extent these reports are representative of responsive reports that existed prior to the date the department received the instant requests, we will address the applicability of your arguments to the submitted information. We further note that most of the information within the submitted reports is not responsive to the instant request as it does not consist of the three items specified in the request. We have marked information that is representative of responsive information. We will address your exception to disclosure of the marked information. This ruling does not address the public availability of any information that is not responsive to these requests, and the department is not required to release that information in response to the request.

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 exception encompasses information that other statutes make confidential. You contend the requested information is confidential under 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 department].” *Id.* § 411.141(5); *see id.* § 411.001(3).

The director of the department 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 director has adopted rules that govern the regulation of forensic DNA laboratories in this state. *See* 37 T.A.C. §§ 28.81, .82 (describing minimum standards by which a forensic DNA laboratory must abide); *see also* Gov’t Code § 411.147(b).

You inform us that the requested documents are DNA records relating to forensic analyses of DNA samples collected under subchapter G of chapter 411 of the Government Code. The submitted documents are related to criminal cases. You further inform us that the department’s crime laboratories operate pursuant to rules governing forensic DNA labs in accordance with department regulations. Based on your representations and our review, we agree the responsive information consists of DNA records that are confidential under section 411.153 of the Government Code. Accordingly, the department must withhold the responsive information under section 552.101 in conjunction with section 411.153 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.

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](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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 369912

Enc. Submitted documents

c: Requestor  
(w/o enclosures)