



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2013

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Office of the Criminal District Attorney of Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2012-00292

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# 475488.

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for the criminal case records pertaining to nine named individuals. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim. We have also received and considered comments from the Texas Indigent Defense Commission (the "commission").¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You state the requested information was the subject of a previous request for information from the same requestor, as a result of which this office issued Open Records Letter No. 2012-15940 (2012). In that ruling, we determined to the extent the sheriff's office maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold any such information under

¹We note H.B. 1754 created the Texas Indigent Defense Commission to develop policies and standards for indigent defense, and provides procedures for a county to establish managed assigned-counsel programs. Act of May 30, 2011, 82d Leg., R.S., ch. 984, § 1, 2011 Tex. Gen. Laws 2460, 2460-66 (codified at Tex. Gov't Code Ann. §§ 79.001-.039).

section 552.101 of the Government Code in conjunction with common-law privacy. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the sheriff's office must generally rely on Open Records Letter No. 2012-15940 as a previous determination and withhold any existing information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

However, in this instance, the requestor states she is a representative of the commission. The commission argues the information at issue is being sought through the doctrine of intergovernmental transfer. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. In adherence to this policy, this office has concluded information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655, 414 (1984). However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). Common-law privacy is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. However, we note criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is subject to section 411.083 of the Government Code, which authorizes release of such information only to specific entities. *See* Gov't Code § 411.083(c). Further, motor vehicle record information is subject to section 552.130 of the Government Code, which also has its own access provision governing

release of information.² *See* Gov't Code § 552.130(b). Thus, information subject to these sections may not be transferred pursuant to the intergovernmental transfer doctrine. Accordingly, we must address sections 552.101 and 552.130 of the Government Code for the requested information.

Section 552.101 of the Government Code excepts from public 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, such as chapter 411 of the Government Code, which makes confidential CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Thus, the sheriff's office must withhold any CHRI under section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold any motor vehicle record information under section 552.130 of the Government Code.

In summary, if the sheriff's office chooses to exercise its discretion to release information under the interagency transfer doctrine, then the sheriff's office must withhold any CHRI under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law, and must withhold any motor vehicle record information under section 552.130 of the Government Code. In that instance, the sheriff's office has the

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

discretion to release to the requestor any remaining existing information that is otherwise excepted under section 552.101 of the Government Code in conjunction with common-law privacy. However, should the sheriff's office choose not to exercise its discretion under the interagency transfer doctrine, then the sheriff's office must rely on Open Records Letter No. 2012-15940 as a previous determination and withhold any existing information in accordance with that ruling.

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 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 475488

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Wesley Shackelford
Deputy Director/Special Counsel
Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701
(w/o enclosures)