



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 3, 2015

Ms. Debbie F. Harrison
Assistant District Attorney
Civil Division
Collin County District Attorney's Office
2100 Bloomdale Road, Suite 100
McKinney, Texas 75071

OR2015-25245

Dear Ms. Harrison:

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# 589294.

The Collin County District Attorney's Office (the "district attorney's office") received a request for DNA records, an autopsy report, and a trial transcript pertaining to a specified case.¹ You indicate the district attorney's office does not have any information responsive to portions of the request.² You 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.

¹We note the district attorney's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2(1990), 452 at 3 (1986), 362 at 2 (1983).

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 552.101 of the Government Code 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 Act].

(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.

Gov’t Code § 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 article 38.35). A “DNA database” means “one or more databases that contain forensic DNA records maintained by the director of [the Department of Public Safety (“DPS”)]. Gov’t Code § 411.141(5); *see id.* § 411.001(3).

The director of DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.142(h) (requiring director establish standards for DNA analysis), .144(a). 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. §§ 28.81, .82 (describing minimum standards by which forensic DNA laboratory must abide); *see also* Gov’t Code § 411.147(b).

Upon review, we find the submitted information consists of records relating to DNA analyses of samples that appear to have been collected under subchapter G of chapter 411 of the Government Code. We note this information appears to be the result of forensic DNA analyses performed by a DNA laboratory in accordance with DPS regulations. Therefore, the district attorney’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code.³ *See*

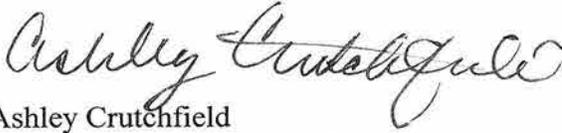
³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

City of Fort Worth v. Abbott, 258 S.W.3d 320, 328 (Tex. App.—Austin 2008, no pet.) (section 411.153 of the Government Code prohibits release of DNA records held by city forensic science laboratory regardless of whether that record has been forwarded to DPS state DNA database).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 589294

Enc. Submitted documents

c: Requestor
(w/o enclosures)