



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2015

Mr. Renaldo L. Stowers
Senior Associate General Counsel
Office of General Counsel
University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203

OR2015-25339

Dear Mr. Stowers:

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# 589542 (UNT System PIR No. 001572).

The University of North Texas Health Science Center (the "center") received a request for twenty categories of information pertaining to two specified cases and the center's DNA laboratory. You state you will provide some information to the requestor. 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 representative sample of information.¹

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-23584 (2015). In Open Records Letter No. 2015-23584, we concluded the center must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly,

¹We assume the "representative sample" of records 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 those records contain substantially different types of information than that submitted to this office.

for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the center must continue to rely on Open Records Letter No. 2015-23584 as a previous determination and withhold such 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 information is or is not excepted from disclosure).

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 encompasses information made confidential by other statutes. Section 552.101 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.

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 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).

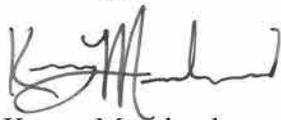
You explain the submitted information consists of forensic DNA reports, which identify the source from which the DNA was extracted, indicate the number of alleles within the DNA mixture, contain the results of DNA tests, and contain a statistical report. You assert the submitted information consists of “DNA records because they were generated for the purpose of, and result from, a forensic DNA analysis.” 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 center must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code.² See *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).

In summary, the center must continue to rely on Open Records Letter No. 2015-23584 as a previous determination and withhold the identical information in accordance with that ruling. The center must withhold the submitted information under section 552.101 of the Government Code 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.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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Ref: ID# 589542

Enc. Submitted documents

c: Requestor
(w/o enclosures)