



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 16, 2015

Ms. Jacqueline E. Hojem  
Public Information Coordinator  
Metropolitan Transit Authority of Harris County  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2015-26490

Dear Ms. Hojem:

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# 590947 (MTA No. 2015-0416).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for the requestor's personnel file.<sup>1</sup> You state the authority will release some of the requested 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 information.

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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists

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<sup>1</sup>We note the authority 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter F or subchapter E-1 of chapter 411 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. However, section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked under chapter 411 constitutes confidential CHRI. Therefore, the authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, none of the remaining information consists of confidential CHRI under chapter 411 and the authority may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;
- (4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. In this instance, Exhibit 3 consists of polygraph information of the requestor. Thus, the authority has the discretion to release Exhibit 3 pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, examination results to be disclosed to examinees). Otherwise, the authority must withhold Exhibit 3 under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which pertains, in part, to an L-2 Declaration of Medical Condition form required by the Texas Commission on Law Enforcement (“TCOLE”). Section 1701.306 provides in relevant part:

(a) The [TCOLE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

...

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

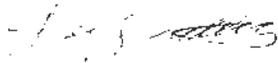
*Id.* § 1701.306(a)(2), (b). Upon review, we find the submitted L-2 declaration form, which you have submitted as Exhibit 4, is confidential under section 1701.306 of the Occupations Code; thus, the authority must withhold Exhibit 4 under section 552.101 of the Government Code on that basis.

In summary, the authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The authority must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; however, the authority has the discretion to release this information pursuant to section 1703.306(a)(1). The authority must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The authority must release the remaining information.<sup>2</sup>

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](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 590947

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>Because the requestor has a special right of access to some of the information being released in this instance, the authority must request another ruling from this office if the authority receives another request for this information from a different requestor.