



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1995

Ms. Debra Yaniko Dupont
Assistant District Attorney
Tarrant County
Justice Center
401 West Belknap
Fort Worth, Texas 76196-0201

OR95-1615

Dear Ms. Dupont:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 35537.

Tarrant County (the "county") received an open records request for an individual's employment records maintained by the county sheriff's department. You inform us that you have released many portions of the individual's employment records to the requestor. You contend that various portions of the employment records are excepted from required disclosure pursuant to sections 552.101, 552.102, 552.107, 552.111, and 552.115 of the Government Code. You submit for our review the portions of the individual's employment records that you contend are excepted from required public disclosure.

Submitted as exhibit K for our review is an Employment Information Authorization that states that the individual employee requests and authorizes the county to furnish the requestor, an attorney, any and all information concerning his employment records. While you question the validity of this authorization and state the requestor told you that he is not the employee's attorney but rather the attorney for the other party in a lawsuit in which the employee is a party, you have not shown that in fact the authorization is invalid. This office, in the open records process, cannot resolve fact questions, and, we must rely upon the representations of governmental bodies and third parties. *See* Open Records Decision No. 554 (1990), 552 (1990). Consequently, for purposes of this ruling, we assume that the authorization submitted as exhibit K was executed by the individual whose employment records are being sought and that it is a valid authorization.

You argue that the request is overbroad and therefore the county is not required to respond and produce documents. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. See Open Records Decisions Nos. 304 (1982), 87 (1975), 31 (1974), 23 (1974). In response to the request at issue here, you must make a good-faith effort to relate the request to information in the county's possession and must help the requestor to clarify the request by advising of the types of information available. Beyond these requirements, however, the county need not generate new information to comply with the request.

You contend that the entire personnel file at issue is exempt from public disclosure pursuant to section 552.102. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). In this instance, the employee whose personnel file is being sought, has waived any privacy interest he may have had to information in his personnel file because he has executed an authorization for the county to release any information in his personnel file to this particular requestor. Consequently, none of the information contained in this individual's personnel file may be withheld from this particular requestor pursuant to section 552.102. In the event a different requestor seeks the same information, the county must seek a ruling from this office.

You contend that the records submitted for our review as exhibit C are criminal history records that are excepted from required public disclosure pursuant to section 552.101 of the Government Code. Additionally, we note that exhibit D also contains references to criminal history information. Exhibits C and D include information that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Most criminal history record information (CHRI) is excepted from disclosure by section 552.101. The dissemination of CHRI obtained from the NCIC network is limited by federal law. See 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. As for CHRI generated within Texas, section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. See also Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information 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 the information except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Please note, however, that driving record information is not confidential under chapter 411, *see Gov't Code* § 411.082(2)(B), and must be released.

Submitted for our review as exhibit D is a background investigation report prepared regarding the individual who is the subject of this open records request. You contend that the document is not subject to required public disclosure pursuant to section 552.101 of the Government Code since disclosure would invade the individual's privacy. Since the employee has specifically authorized the release of information in his personnel file to this requestor, the employee has waived any privacy interests he may have had in these documents. Consequently, you must release the information in exhibit D that is not NCIC or TCIC information. *See Gov't Code* § 552.023. If this information is requested by a person without written authorization, you must resubmit such a request to this office for a ruling.

Additionally, the report contains information regarding the results of a polygraph examination. Any information acquired from a polygraph examination is excepted from public disclosure. *See V.T.C.S.* art. 4413(29cc), § 19A. We have marked the portions of the report containing polygraph results that must be withheld pursuant to section 552.101.

Submitted for our review as exhibit E, is a copy of the individual's certificate of registration of birth. You contend that section 552.115 of the Government Code protects this document from required public disclosure. Section 552.115 provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health is excepted from required public disclosure "except that a birth record is public information and available to the public on and after the 50th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official." Since section 552.115 only applies to a birth certificate maintained by the bureau of vital statistics, the county may not withhold the certificate of birth registration in the employment records pursuant to that section. *See Open Records Decision No. 338 (1982)*. This document must be released to the requestor.

Submitted for our review as exhibit F are completed forms titled request for personal references. You contend that these are excepted from public disclosure pursuant to section 552.111 of the Government Code. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *Open Records Decision No. 615 (1993)*. A governmental body's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues.

Id. at 5-6. The information submitted for our review as exhibit F relates to an internal administrative and personnel matter, that is, the employment application process and the decision about whether to hire this particular individual. Accordingly, we conclude that section 552.111 of the Government Code does not except the requested information from required public disclosure. The county must therefore release the information submitted for our review as exhibit F.

You contend that the information submitted for our review as exhibit I also is excepted from required public disclosure pursuant to section 552.111 of the Government Code. After reviewing the information in exhibit I, we conclude that it relates to an administrative and personnel matter rather than to a policymaking function of the county. The county may not withhold the information contained in exhibit I pursuant to section 552.111 and, thus, must disclose the information to the requestor.

Submitted for our review as exhibit G are documents that you contend are excepted from required public disclosure pursuant to section 552.107. Section 552.107(1) protects from disclosure information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. *See* Open Records Decision No. 574 (1990). Section 552.107(1), however, does not protect purely factual information. *Id.* After reviewing the submitted documents, we conclude that the information is factual in nature and its disclosure will not reveal any client confidences. The county may not withhold the information submitted to us as exhibit G from required public disclosure pursuant to section 552.107(1).

Submitted as exhibit J for our review are documents that you contend are psychological records excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. “[R]ecords of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained” by a mental health professional are confidential. Health & Safety Code § 611.002. The records submitted as exhibit J were prepared by a mental health professional and are within the ambit of section 611.002 of the Health and Safety Code. Assuming that the requestor is acting on the patient’s behalf, the content of a confidential record shall be made available to the requestor. *See* Health & Safety Code § 611.0045. Otherwise, the records are confidential and must be withheld pursuant to section 611.002 of the Health and Safety Code in conjunction with the section 552.101 of the Government Code.

Submitted as exhibit L for our review are documents that you contend are medical records excepted from required public disclosure pursuant to section 552.101 in conjunction with the Medical Practice Act, V.T.C.S. article 4495b (“MPA”). The medical records submitted are governed by the MPA. Section 5.08(b) of the MPA provides that “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician” are confidential. Records must be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. Attorney General Opinion JM-229 (1984) at 2; Open Records Decision

No. 343 (1982) at 1. Access to these records is governed by the MPA rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991) at 1; *see* Open Records Decision No. 565 (1990) (release of medical records). When access to records is governed by provisions outside of chapter 552 of the Government Code, exceptions under chapter 552 are not applicable to the release of the records. Open Records Decision No. 598 (1991) at 1. You may release these records only as provided under the MPA.

You inform us that some of the information submitted to us as exhibit H is not responsive to the request for information. The county is not required to provide information unresponsive to a request for information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 35537

Enclosures: Marked documents

cc: Mr. Rocky Little
Kraus, Ramirez & Little, L.L.P.
Attorneys At Law
P.O. Box 830458
Richardson, Texas 75083-0458
(w/o enclosures)