



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1997

Ms. Joni M. Vollman
Assistant General Counsel
Harris County District Attorney's Office
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR97-2547

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110292.

The Harris County District Attorney's Office (the "district attorney") received a request for all documents relating to *State of Texas v. Jeffrey Lynn Williams*. You have released some of the requested documents. You contend that the remaining documents are excepted from disclosure pursuant to sections 552.101, 552.107, 552.108, and 552.114 of the Government Code.¹ You have submitted a representative sample of the documents at issue to this office for review.² They are labeled exhibits A through H.

First, you claim that exhibit A is excepted from disclosure under section 552.114 of the Government Code. Exhibit A consists of the defendant's school records from the Houston Independent School District. Section 552.114 of the Government Code excepts information from

¹You also invoke sections 552.102 and 552.103 of the Government Code. Section 552.102 applies to information in a public employee's personnel file. You have not submitted any personnel documents to this office. Therefore, we need not address your section 552.102 claim. You do not indicate that section 552.103 is applicable to any of the submitted exhibits, and, therefore, we also do not address your section 552.103 claim.

²We assume that 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 that those records contain substantially different types of information than that submitted to this office. You have not submitted to this office some responsive documents that you state are confidential by law as determined by this office "in numerous decisions." This ruling does not address those documents, but rather is limited to the submitted representative sample and documents that contain information that is substantially similar to the information in the representative sample.

disclosure "if it is information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.114 protects student records only when those records are in the hands of an educational institution. *See* Open Records Decision Nos. 634 (1995), 390 (1983). Therefore, we conclude that exhibit A, in the hands of the district attorney, is not excepted from disclosure under section 552.114. Exhibit A must be released to the requestor who is the defendant's attorney. We note, however, that some of the information in exhibit A implicates the defendant's privacy interests. Therefore, the district attorney should exercise caution in releasing exhibit A to anyone other than the defendant or the defendant's attorney. *See* Gov't Code §§ 552.023, .352.

Next, you contend that exhibits B, C, D, and E are excepted from disclosure under section 552.101 of the Government Code³ in conjunction with the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S. However, exhibits B, C, D, and E contain mental health records and emergency medical services ("EMS") records, as well as medical records.⁴ We agree that the medical records are subject to section 5.08(b) of the MPA, which provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

These medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* V.T.C.S. art. 4495b, §§ 5.08(c), (j).

We believe that the mental health records are deemed confidential by Section 611.002 of the Health and Safety Code, which provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

The mental health records must not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

³Section 552.101 excepts from disclosure information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision.

⁴Exhibits B, C, D, and E also contain business record affidavits and subpoenas. You assert that these exhibits are excepted from disclosure in their entirety under section 552.101 in conjunction with the MPA. However, the business record affidavits and subpoenas are not subject to the MPA. Because you have raised no additional arguments against the disclosure of the business records affidavits or the subpoenas, we conclude that you must release these documents.

Exhibit B includes EMS records that were completed by EMS personnel. Section 773.091 provides of the Health and Safety Code is applicable to the records. Section 773.091 provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). We do not understand any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code to apply in this instance. Accordingly, the district attorney must withhold the submitted EMS records under section 552.101 of the Government Code, except to the extent that they contain “information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” The types of information listed in section 773.091(g) must be released. We have marked the EMS records accordingly.

You assert that exhibit F is excepted from disclosure under section 552.101 in conjunction with section 143.1214 of the Local Government Code. Exhibit F consists of Texas Department of Criminal Justice (“TDCJ”) records pertaining to an internal affairs investigation at the Ellis 2 Unit. Section 143.1214 sets out a record keeping scheme for documents relating to unsustained allegations or overturned disciplinary actions involving police officers and fire fighters. However, this section applies only to the police and fire departments of a municipality with a population of 1.5 million or more. Local Gov’t Code § 143.101. Thus, section 143.1214 is not applicable to the TDCJ records in exhibit F.

Nevertheless, some of the information in exhibit F is excepted from disclosure. Section 552.117(3) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of employees of TDCJ. We have marked this information, and the district attorney must withhold it from disclosure. In addition, we believe that the circumstances surrounding the TDCJ internal affairs investigation warrant the withholding of the identity and statements of a particular corrections officer. *See* Open Records Decision No. 169 (1977). We have indicated on the cover sheet for exhibit F which officer’s statements and identity must be withheld.

You contend that exhibit G is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution

of crime is excepted from the requirements of Section 552.021 if:

...

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

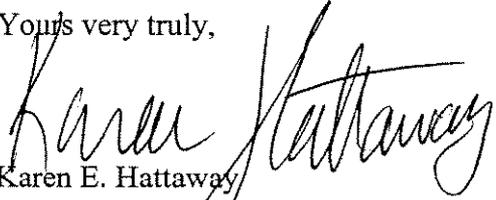
Gov't Code § 552.108. You characterize exhibit G as documents that constitute "the thought processes and attorney work product of the district attorney's office with respect to the prosecution of the criminal case." Our review of exhibit G reveals that it consists entirely of the prosecutor's notes about the case. We conclude, therefore, that you may withhold exhibit G from disclosure under section 552.108(a)(3).⁵ It appears that you have already disclosed basic information about the crime as required by section 552.108(c). See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

Finally, you contend that exhibit H is excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy. Section 552.101 encompasses the common-law right to privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify her/him. Exhibit H includes information relating to the sexual assault of a minor. We have marked the types of information in exhibit H that the district attorney must withhold from disclosure in order to protect the privacy of the minor. The district attorney must release to the requestor any information that we have concluded is not excepted from disclosure.

⁵Because we conclude that exhibit G is excepted from disclosure under section 552.108, we need not address your claim that exhibit G is also excepted from disclosure under section 552.107.

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 110292

Enclosures: Marked documents

cc: Ms. Robin Norris
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(w/o enclosures)