



August 23, 1999

Ms. Katherine Minter Cary
Assistant Attorney General
Open Records Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2380

Dear Ms. Cary:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126822.

The Office of the Attorney General, Crime Victims' Compensation Division, received a request for information concerning a named individual. You contend that the records at issue are protected from disclosure pursuant to sections 552.101, 552.108, 552.111 of the Government Code. You submitted representative samples of the information at issue to this office for review.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by constitutional or common-law privacy and under certain circumstances excepts from disclosure private facts about individuals. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992). We have marked those portions of the submitted information which must be withheld under common-law privacy.

¹We 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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 also protects from disclosure information made confidential by statute. Access to medical records is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(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.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the city police department obtained the records. Open Records Decision No. 565 (1990) at 7. Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the records that are subject to release only as provided by the MPA.

Additionally, the tax return in the submitted documents must be withheld under section 552.101 in conjunction with 26 U.S.C. section 6103.

Section 552.108(a)(1) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Section 552.108 may be invoked by the proper custodian of information relating to an ongoing investigation or prosecution of criminal conduct. The exception is applicable even if the custodian is not a law enforcement agency if the investigation may lead to the filing of criminal charges. Open Records Decision No. 474 at 4-5 (1987). When an agency claims the exception, the pertinent question is if release of the information would undermine law enforcement or the investigation and prosecution of crime. Open Records Decision No. 434

(1986). You explain that the Bexar County District Attorney's Office has asked that portions of the requested information not be released because they pertain to a pending criminal case. We have marked the information which you may generally withhold under section 552.108(a)(1).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other exception to disclosure, you must release these types of information in accordance with *Houston Chronicle Publishing Company 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).

You contend that other documents are protected from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure inter-agency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. *See Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). Section 552.111 excepts from required public disclosure preliminary drafts of documents related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final documents. *See* Open Records Decision No. 559 (1990). However, section 552.111 does not except from disclosure purely factual information. We have marked the information which you may withhold under section 552.111. Except as noted, the submitted information must be released.

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 questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 126822

Encl. Submitted documents

cc: Mr. Jeffrey E. Dahl
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(w/o enclosures)