



October 15, 1999

Mr. Brian D. MacLeod
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2947

Dear Mr. MacLeod:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128088.

The Office of the Attorney General (the "OAG") received a request for "copies of paid checks, cash receipts, invoices, and credit card debits" submitted by a named individual as part of a claim for crime victims' compensation. You contend that the documents submitted as Exhibit B are protected from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

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 other statutes. 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 at 7 (1990). 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.

Section 552.101 also encompasses information protected by constitutional or common-law privacy and excepts from disclosure private facts about an individual. *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 the public when (1) it is 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 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

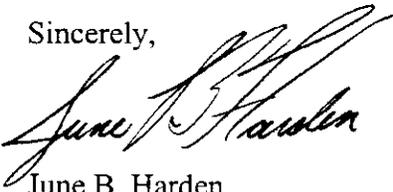
After reviewing the submitted documents, we conclude that most of the information at issue is protected by common-law or constitutional privacy, and must be withheld.¹ *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983) (concluding that financial

¹We note, however, that section 552.023 of the Government Code provides a person, or the authorized representative of a person, a special right of access to records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests.

information relating only to individual ordinarily satisfies first requirement of test for common-law privacy). We note, however, that some of the information involves a financial transaction between a governmental body and an individual, and must, therefore, be released. We have marked the documents accordingly.²

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 128088

Encl. Marked documents

cc: Mr. Jeffrey E. Dahl
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405 North St. Mary's Street, Suite 242
San Antonio, Texas 78206-1722
(w/o enclosures)

²The documents marked for release contain the applicant's social security number. A social security number or "related record" may be exempted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the applicant's social security number is confidential under section 405(c)(2)(C)(viii)(I), and, therefore, exempted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the OAG pursuant to any provision of law enacted on or after October 1, 1990.