



January 25, 2000

Ms. Kristi LaRoe  
Assistant District Attorney  
Office of the Criminal District Attorney  
Tarrant County  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR2000-0234

Dear Ms. LaRoe:

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# 131465.

The Tarrant County Sheriff's Department (the "department") received two written requests for all records pertaining to three particular case numbers. You state that most of the requested information has been released to the requestors. You seek to withhold, however, certain other documents pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We will discuss each of your arguments for non-disclosure in turn.

You first contend that the contents of Exhibit B are made confidential under section 261.201 of the Family Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

Exhibit B consists of records from the Texas Department of Protective and Regulatory Services that were used in a chapter 261 investigation. Those records are confidential under section 261.201 as files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 and must be withheld in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Exhibit C contains photocopies of a driver's license. Section 552.130(a)(1) of the Government Code requires that the department withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold the photocopies of the driver's license. Because you have raised no other exception for Exhibit C, the remaining information contained in these documents must be released.

Exhibit D consists of EMS records. Section 773.091 of the Health and Safety Code provides in pertinent 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.

.....

(g) The privilege of confidentiality under this section 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.

After reviewing Exhibit D, we conclude that those records constitute “[r]ecords of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician” that must be withheld pursuant to section 773.091(b), except to the extent that the records contain the types of information listed in subsection (g), which must be released.

You next contend that the documents in Exhibit E, which you characterize as medical examiner investigator records, are made confidential under section 671.011(b) of the Health and Safety Code. You note that although “autopsy reports” are specifically made public under section 11 of article 49.25 of the Code of Criminal Procedure, section 671.011(b) of the Health and Safety Code specifically excludes from the definition of “autopsy report” any “investigative reports and other documents that the physician performing the autopsy may review to assist in determining the cause of death.” Section 671.011(b) does not make such investigative reports confidential, however; it merely excludes such reports from the mandatory release provisions found in section 11 of article 49.25.<sup>1</sup> Consequently, those investigatory records are subject to public disclosure under the Public Information Act and may be withheld only under an applicable exception to disclosure. Because you have raised no other exception to disclosure with regard to these records, we conclude that the department must release the investigation records in their entirety.

You describe the contents of Exhibit F as “911 Call Summary Sheets,” which you contend are made confidential under section 771.061 of the Health and Safety Code because these documents “are call summary sheets of the 911 service provider.” We believe, however, that other provisions of the Health and Safety Code may be the more pertinent statutory provisions here. Section 771.061(a) of the Health and Safety Code makes confidential certain information that telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. *See generally* Open Records Decision No. 661 (1999). On the other hand, sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). Assuming that one of these provisions is applicable to Tarrant County, we conclude that the department must withhold all such telephone numbers and addresses contained in Exhibit F. The remaining information in these documents must be released.

Exhibit G consists of criminal history record information (“CHRI”) that the department obtained from the Texas Department of Public Safety. A criminal justice agency may not

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<sup>1</sup>In contrast, a recent amendment to section 11 of article 49.25 makes confidential, with certain exceptions not applicable here, “a photograph or x-ray of a body taken during an autopsy.” *See* Act of May 22, 1999, 76<sup>th</sup> Leg., R.S., ch 607, § 2. This amendment took effect on September 1, 1999. *Id.* § 3.

release CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI the department obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. In this instance, the department must withhold the contents of Exhibit G.

You contend that the records contained in Exhibit H are excepted from public disclosure pursuant to section 552.108 of the Government Code because the records consist of a prosecutor's internal law enforcement records, the release of which would interfere with the detection, investigation, or prosecution of crime. After reviewing the contents of Exhibit H, it is not clear to this office, nor have you otherwise explained, how the release of these records would interfere with law enforcement or prosecution. See Gov't Code § 552.301(e)(1)(A). Consequently, the department must release Exhibit H in its entirety, except for information made confidential under section 552.130(a)(1) as discussed above.

Finally, we note that some of the records at issue contain social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994).

It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the department should ensure that these numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

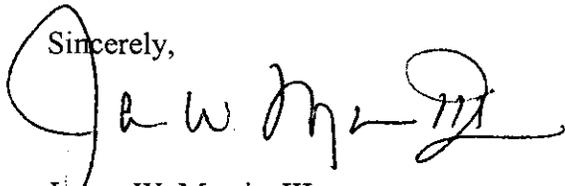
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/RWP/ch

Ref.: ID# 131465

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