



January 25, 2000

Mr. Ed C. Jones
Assistant County Attorney
Office of the County Attorney
Angelina County
P.O. Box 1845
Lufkin, Texas 75902

OR2000-0237

Dear Mr. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131531.

The sheriff's office of Angelina County (the "county") received a request for all records regarding incident number 95-07657, all records regarding the requestor contained in any other case files or incident reports, and various telephone records. You state that no telephone records responsive to the request exist. In regard to the rest of the requested information, you claim that it is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from required public disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation has been pending or reasonably anticipated at least since the time of the request, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990); Gov't Code § 552.103. The county must meet both prongs of this test for information to be excepted under section 552.103.

You explain that the requestor has recently filed a federal lawsuit in which he names "Donald R. Morris, individually and in his capacity as a Texas Ranger, and John Does 1 through 30" as defendants. *Soape v. Morris*, No. 9:99-CV-288 (E. D. Tex. filed Oct. 25, 1999). In the complaint, the requestor generally alleges that the named Texas Ranger and the various John Does acted together to violate the requestor's civil rights in regard to a criminal conviction. You argue that the county anticipates the requestor will file a similar lawsuit against the county sheriff or some of his employees. The requestor has notified the sheriff's office that he wishes to depose some officers. However, we see no evidence that the requestor has actually threatened to sue the county, or that he necessarily intends to do so. Consequently, we find that the county is not reasonably anticipating litigation concerning the requested information. Therefore, the county may not withhold the information under section 552.103.

However, portions of the requested information are confidential and therefore must be withheld. For example, the information includes criminal history record information ("CHRI"). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential by statute. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI 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 CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411, *see Gov't Code* § 411.082(2)(B), and must be disclosed. We have marked information excepted from required public disclosure by section 552.101 of the Government Code. We note, however, that DPS must grant the person who is the subject of the CHRI access to the CHRI. *Gov't Code* § 411.083(b)(3).

Next, the requested information includes medical records which are subject to section 159.002 of the Occupations Code, known as the Medical Practices Act (“MPA”)¹ in conjunction with section 552.101 of the Government Code. As explained above, section 552.101 encompasses confidentiality provisions such as the MPA. The MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002 (b), (c). The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990).² Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002 (a), (b), (c); Open Records Decision No. 598 (1991). We have marked the medical records that appear in the submitted documents. The county may release these records only in accordance with the MPA.³

In conclusion, the county may not withhold any of the submitted information under section 552.103. However, the county must withhold the marked criminal history information under chapter 411 of the Government Code. The county may release the marked medical records

¹The Seventy-sixth Legislature repealed article 4495b of Vernon’s Texas Civil Statutes. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 6, 1999 Tex. Sess. Laws 1431, 2439 (Vernon) (adopting Occupations Code). The former article 4495b of Vernon’s Texas Civil Statutes now is codified as the Medical Practice Act at subtitle B of title 3 of the Occupations Code, and the former section 5.08 of article 4495b is codified at chapter 159 of the Occupations Code.

²Inasmuch as the Seventy-sixth Legislature intended no substantive change in the law in codifying the Medical Practice Act at subtitle B of title 3 of the Occupations Code, open records decisions interpreting the former section 5.08 of article 4495b of Vernon’s Texas Civil Statutes retain their relevance. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 7, 1999 Tex. Gen. Laws 1431, 2440.

³*See* Occ. Code §§ 159.004(5), 159.005(1) (providing that otherwise confidential medical information may be released to a person who bears a written consent of the patient, subject to certain requirements).

only in accordance with the MPA, sections 159.002 *et seq.* of the Occupations Code. The county must release the rest of the submitted records.⁴

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).

⁴We note that some of the documents that the county must release contain information that would ordinarily be confidential under sections 552.101 and 552.130 of the Government Code. However, because this information relates to the requestor, and because sections 552.101 and 552.130 would only serve to protect the requestor's privacy interests, the requestor has a special right of access to this information under section 552.023 of the Government Code.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 131531

Encl: Submitted documents

cc: Mr. Allen Soape, Jr.
P.O. Box 1054
Huntington, Texas 75949
(w/o enclosures)