



July 25, 2000

Ms. Tenley Aldredge
Assistant County Attorney
County Of Travis
314 West 11th Suite 300
P O Box 1748
Austin, Texas 78767

OR2000-2802

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137368.

The Travis County Attorney's Office (the "county") received a request for "all documents and information" relating to a named individual. You indicate that you have released to the requestor "all court-filed records."¹ You have submitted for our review information that is responsive to the request, all of which pertains to an incident in September 1997 involving the named individual. You claim that this information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

We note at the outset that the submitted documents indicate that a petition for expunction of the records at issue has been filed with the court. The information you have provided does not advise us of whether or when the petition for expunction was granted. Article 55.03(1) of the Code of Criminal Procedure prohibits, "[a]fter entry of an expunction order," the "release, dissemination, or use of the expunged records and files for any purpose." *See* Code Crim. Proc. Art. 55.03. This office has found that where applicable, the specific provisions of chapter 55 of the Code of Criminal Procedure authorizing the expunction of arrest records controls over the more general release and records retention provisions of the Public Information Act (the "Act"). *See* Attorney General Letter Opinion No. 93-88 (1993) (copy enclosed). Thus, if an order for expunction of the records at issue was granted prior to the county's receipt of the present request, we advise that article 55.03(1) of the Code of

¹You have nevertheless submitted for our review a number of documents that are indicated to have been filed with a court. Because we understand your representations to this office to mean that these documents are not among the information that the county seeks to withhold, this decision does not specifically address the court-filed documents. Instead, we rely on your representation that any responsive information that has been filed with a court has been released to the requestor.

Criminal Procedure prohibits the county from releasing the records for any purpose, including to the present requestor. In the event that no expunction order was entered prior to the county's receipt of the present request, we next address the implications of a release of the information to the present requestor.

The present requestor is the State Board for Educator Certification ("SBEC"), which states that it seeks the information to determine whether the individual "is suitable for licensure as a Texas education professional." SBEC thus requests the information in order to carry out its official business. We advise that a governmental body may generally transfer information subject to the Act to another governmental body without violating the confidentiality of the information, and without waiving exceptions to public disclosure of the information. *See* Attorney General Opinion H-917 at 1 (1976); Open Records Decision No. 661 at 3 (1991). We believe that access to some of the information (criminal history record information and a letter from a psychologist) is governed by provisions outside the Act, and we below address the provisions that apply to this information. However, as to the remaining information, we advise that the county may release this information to SBEC without implicating the Act's prohibition against selective disclosure, and without waiving any of the exceptions under the Act that may require or permit the county to withhold the information from the public. *See* Attorney General Opinion JM-119 at 2 (1983); *see also* Gov't Code § 552.007(b) (prohibiting the withholding of information from a member of the public if the governmental body has previously released that information to another member of the public).

As to the criminal history record information ("CHRI"), you assert section 552.101 of the Government Code. We believe that access to the CHRI is governed by the provisions of chapter 411 of the Government Code. The county, a criminal justice agency, evidently obtained the CHRI pursuant to section 411.083(b)(1). *See* Gov't Code § 411.083(b)(1). Accordingly, the CHRI "may be disclosed or used by" the county "only if, and only to the extent that, disclosure or use is authorized or directed by" the provisions of subchapter F of chapter 411. *See id.* § 411.084(2)(A). Section 411.087(a)(2) authorizes the release of CHRI to a noncriminal justice agency that has statutory authority to obtain CHRI. *See id.* § 411.083(b)(2). SBEC is among the noncriminal justice agencies with such statutory authority. *See id.* § 411.090. We therefore conclude that the CHRI contained in the submitted documents is not made confidential in this instance. Rather, pursuant to section 411.087(a)(2) of the Government Code, we conclude that SBEC is an authorized recipient of the CHRI.²

²Although SBEC is authorized to obtain the CHRI, we note that section 411.090 limits the purposes for which SBEC may use the information, prohibits SBEC from further releasing the information, and requires that the information be destroyed by SBEC after it is used for authorized purposes. *See* Gov't Code § 411.090(b).

You also contend that a psychologist's letter which you have marked is subject to section 552.101 in conjunction with the Medical Practice Act (the "MPA"), found at subtitle B of title 3 of the Occupations Code. You assert that the county may only disclose this letter in accordance with the access provisions of the MPA. We disagree. The letter at issue is indicated to have been provided to the county by a psychologist at the request of the patient. We believe that access to this document is governed by chapter 611 of the Health and Safety Code, which applies to records created or maintained by a mental health professional. In pertinent part, section 611.002(a) states that "records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Health & Safety Code § 611.002. Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Thus, the letter at issue is subject to the confidentiality provision at section 611.002. Although sections 611.004 and 611.0045 provide for certain exceptions to confidentiality, none of these exceptions appears to apply in this instance. *See* Health & Safety Code §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Additionally, subsection 611.004(d) provides, in pertinent part, that a person "who receives information [made confidential under section 611.002] may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information." Health & Safety Code § 611.004(d). Because we have no indication that disclosure of the letter to the present requestor would constitute a disclosure "consistent with the authorized purposes" for which the county first obtained the letter, and because none of the release provisions under sections 611.004 and 611.0045 appear to apply, we conclude that the county must not release the letter to the requestor.

As to the remaining information, we next address the "law enforcement exception" found at section 552.108 of the Act. In pertinent part, this provision states:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

See Gov't Code § 552.108. You state that the "subject of the requested case file was placed on deferred prosecution" which is an "internal procedural resolution of a criminal case" that "is not equivalent to deferred adjudication." We thus understand from your representations, as well as our review of the documents, that this case has concluded in a final result other than conviction or deferred adjudication. We accordingly believe that the county has the discretion to withhold most of the remaining information under subsection 552.108(a)(2). We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g 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). Thus, the county must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); see *Houston Chronicle*, 531 S.W.2d at 187.

In summary, if an expunction order was entered prior to the county's receipt of the present request, the county is prohibited from using or releasing any of the expunged records for any purpose, including a release to the present requestor. Otherwise, the requestor is authorized to obtain the CHRI pursuant to section 411.087(a)(2) of the Government Code. Access to the psychologist's letter is governed by chapter 611 of the Health and Safety Code, which in this instance prohibits its release to the requestor. The remaining information is subject to section 552.108 of the Government Code. Except for the basic front page offense report information which the county must release, the county therefore has the discretion to withhold any or all of the remaining information. However, a release of any of the remaining information to the requestor does not implicate the Act's prohibition against selective disclosure, and therefore does not prevent the county from thereafter withholding the information from the public pursuant to section 552.108.

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.

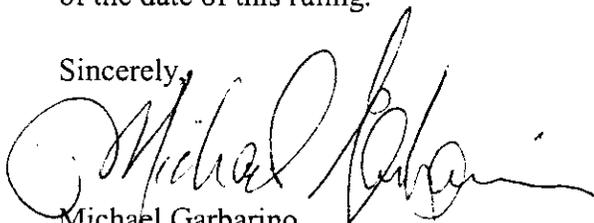
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137368

Encl. Submitted documents

cc: Mr. Doug Phillips
State Board For Education Certification
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(w/o enclosures)