



April 27, 2001

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2001-1744

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146533.

The Travis County Sheriff's Department (the "sheriff") received a request for information related to a specified investigation. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Some of the records at issue are medical records. Access to medical records is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Section 159.002 of the MPA provides:

(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, other than a person listed in Section 159.004 who is 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.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Such records must be released upon the patient's signed, 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. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the documents that are medical records subject to the MPA.

The submitted materials include court orders and other documents which are apparently filed with a court. Section 552.022 of the Government Code provides several categories of information that are not excepted from required disclosure unless they “are expressly confidential under other law.” One such category is “information that is also contained in a public court record.” Gov’t Code § 552.022(a)(17). Section 552.108, when raised, as here, to protect the interests of the governmental body that seeks to withhold information, does not protect the interests of third parties, nor does it make information confidential. Also note that the identities of individuals in records filed with a court are not protected by common law privacy. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (identity of victim in court records is public information). We have marked the submitted information to indicate the portion which must be released under section 552.022(a)(17).

You assert that the submitted information is excepted from disclosure by section 552.108(a)(2) and (b)(2) of the Government Code. These provisions except from public disclosure law enforcement records that relate to an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2), (b)(2). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the submitted materials is the record of a criminal investigation conducted by the sheriff’s office. You further explain that this investigation was dismissed by the prosecutor pending further investigation in 1996. We note that the prosecution of this alleged offense is now barred by statutes of limitation. *See* Crim. Proc. Code arts. 12.01, 12.02. Based on your representations and our review of the documents, we conclude that the investigation is final and that it did not result in conviction or deferred adjudication. Therefore, we conclude that most of the submitted information is excepted from disclosure under section 552.108(a)(2) and (b)(2) of the Government Code.

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” We generally assume this “general information” to be the “front page information” made public by *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) (summarizing types of information considered to be “basic information”). Note that witness statements are not “basic information” and thus need not be released.

In conclusion the information we have marked as medical records may be released only in accordance with the MPA; The information that we have marked as subject to section 552.022(a)(17) of the Government Code, and the “basic” information concerning the offense that resulted in an arrest must be released; all of the remaining submitted information may be withheld under section 552.108 of the Government Code.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,

Handwritten signature of Michael J. Burns in black ink.

Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/tr

Ref: ID# 146533

Encl: Submitted documents

cc: Mr. Brian Keith Robinson
10737 Marshitahs Way
Austin, Texas 78748
(w/o enclosures)