



August 13, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-3521

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150650.

The City of El Paso Police Department (the “department”) received a request for information relating to a retired police officer. You inform this office that most of the requested information will be released. You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹

We begin by addressing your argument that some of the submitted information is confidential under the Medical Practice Act (the “MPA”), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of 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.

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the submitted information. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Id. § 159.002(b), (c). The MPA also includes provisions that govern the disclosure of information that it encompasses. *See* Occ. Code §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code.² We agree that the documents submitted as Exhibit C are governed by the MPA. These records must be withheld from the requestor unless the MPA permits their disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the common law right to privacy. Common law privacy protects private facts about individuals. Information must be withheld under section 552.101 in conjunction with common law privacy when (1) the information is highly intimate or 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. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see also* Open Records Decision No. 659 at 4-5 (1999) (summarizing types of information that are protected by rights of privacy).

You claim that Exhibits D and E contain personal financial information that is protected by common law privacy. Prior decisions of this office have determined that although financial information relating only to an individual ordinarily satisfies the first part of the common law privacy test under *Industrial Foundation*, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files). We agree that the documents in Exhibit D and the information you have highlighted in Exhibit E are protected by common law privacy and must therefore be withheld under section 552.101.

Section 552.117(2) of the Government Code excepts from disclosure the home address, home telephone number, or social security number of a peace officer, and information that reveals whether a peace officer has family members, regardless of whether the peace officer has complied with section 552.024 of the Government Code. You represent to this office that the former officer to whom the submitted records pertain is still a commissioned Texas peace officer. You also indicate that other active and retired officers whose social security numbers appear in the submitted documents are commissioned peace officers. We therefore agree that these officers' home addresses, home telephone

²*See* Open Records Decision No. 598 (1991). The Seventy-sixth Legislature repealed the predecessor statute, article 4495b of Vernon's Texas Civil Statutes, in enacting the Occupations Code. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, §§ 6, 7, 1999 Tex. Gen. Laws 1431, 2439-40. The legislation was a non-substantive codification.

numbers, and social security numbers, and information that reveals whether they have family members, are excepted from disclosure under section 552.117(2). Thus, you must withhold the section 552.117(2) information that you have highlighted as well as the additional 552.117(2) information that we have marked.³

Lastly, you assert the requested records contain motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information that relates to

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [and]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). The department must withhold Texas driver's license, license plate, and vehicle identification numbers from the requestor under section 552.130.

In summary, the responsive medical records are governed by the Medical Practice Act. The department must withhold personal financial information that does not involve a transaction with a governmental body under section 552.101 of the Government Code in conjunction with common law privacy. The home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether a peace officer has family members, are excepted from disclosure under section 552.117(2). Texas driver's license, license plate, and vehicle identification numbers must be withheld under section 552.130. The remaining information must be released.

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

³As you correctly note, this office concluded in Open Records Decision No. 670 (2001) that a governmental body may withhold the home address, home telephone number, and social security number of a peace officer, and information that reveals whether the peace officer has family members, without the necessity of requesting a decision under section 552.301 of the Government Code. Open Records Decision No. 670 (2001) is a previous determination under section 552.301(a). *See* Open Records Decision No. 673 at 6-9 (2001).

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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 150650

Enc: Submitted documents

c: Mr. Robert S. Huscroft, Sr.
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(w/o enclosures)