



October 31, 2001

Mr. J. T. Mora, Jr.
Assistant Criminal District Attorney
Galveston County
722 Moody, Suite 300
Galveston, Texas 77550

OR2001-4997

Dear Mr. Mora:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154355.

The Galveston County District Attorney (the “district attorney”) received two requests for copies of an individual’s indictments and convictions. You claim that the submitted information is excepted under section 552.101 of the Government Code. We assume that you have released any other existing responsive information. If not, you must do so at this time. See Gov’t Code §§ 552.301, .302. We have considered the exception you claim and reviewed the submitted information.

You contend that Exhibit C is excepted under common law privacy. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* Where an individual’s criminal record history information (“CHRI”) has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. See *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Therefore, we conclude that you must withhold any compilations of CHRI under section 552.101 of the Government Code in accordance with the holding in *Reporters Committee*.

You also contend that information in Exhibits D, E, and F are excepted under section 411.083 of the Government Code. Section 552.101 also encompasses information protected by statute. 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. Therefore, 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 of the Government Code and must be disclosed. *See Gov’t Code § 411.082(2)(B)*. We have marked the driving record information in Exhibit E that may not be withheld under section 552.101 of the Government Code. Accordingly, the district attorney must withhold the remaining information in Exhibits D, E, and F under section 552.101 of the Government Code.

However, we note that the driving record information contains driver’s license number information which must be withheld under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the marked driver’s license number information under section 552.130(a) of the Government Code.

Exhibit G contains medical records that are confidential under section 159.002(b) of the Occupations Code.¹ Section 159.002(b) of the Occupations Code, the Medical Practice Act (“MPA”), provides the following:

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.

¹We note that you assert section 773.091 of the Health and Safety Code which pertains to records made during the course of providing emergency medical services. Because the records at issue were made during the course of treatment at a hospital emergency room by a physician, we conclude that section 159.002(b) of the Occupations Code is the applicable provision.

Thus, access to medical records is governed by provisions outside the Public Information Act. See Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. Occ. Code §§ 159.002, .003. Medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). Therefore, we have marked the documents in Exhibit G that the district attorney may only release in accordance with the MPA.

In conclusion, the district attorney must withhold Exhibit C under section 552.101 in conjunction with common law privacy. Further, the district attorney must withhold most of Exhibits D, E, and F under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. You must withhold the marked information in Exhibit E under section 552.130 of the Government Code. The marked records in Exhibit G may only be released in accordance with the MPA. You must release the remaining submitted information.

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).

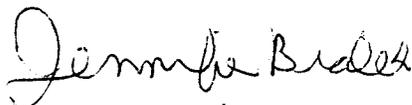
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 154355

Enc: Submitted documents

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