



May 22, 2002

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

OR2002-2756

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# 163271.

The Travis County Sheriff's Office (the "sheriff's office") received a request for any and all documents pertaining to a former deputy regarding discipline matters. As responsive to this request you have submitted to this office an internal affairs investigation, portions of which you claim are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information you have submitted is subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted information constitutes a completed investigation, which the sheriff's office may withhold only to the extent the information is made confidential under other law or is otherwise protected by section 552.108 of the Government Code. We will therefore address whether the mandatory exceptions that you raise make any of the submitted information confidential by law.

We first address the information that you assert constitutes medical records subject to the Medical Practices Act ("MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in 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, 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), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). Medical records may be released only as provided under the MPA. ORD 598. We agree that the documents at Tab B and the information we have marked at Tab A are subject to the MPA and may be released only in accordance therewith.

We turn now to the other information at Tab A. You assert that the submitted records contain criminal history record information ("CHRI") that is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Similarly, the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential and that CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. Gov't Code §§ 411.083(a), 411.084; *see also* Gov't Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from

other criminal justice agencies). We have marked the CHRI that the sheriff's office must withhold under federal law and chapter 411 of the Government Code.

You also claim that the submitted records contain compilations of criminal histories that are confidential under section 522.101 in conjunction with common law privacy. For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). Common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Id.* at 685. The United States Supreme Court has held that where an individual's criminal history information 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). We have marked those portions of the submitted information that must be withheld under section 552.101 and the common law privacy concerns expressed in *Reporters Committee*.

You assert that common law privacy also protects other highlighted information of a personal nature. The submitted documents relate to an investigation into alleged employee misconduct that ultimately resulted in the employee resigning. Although information relating to an investigation of misconduct may be highly intimate or embarrassing, this office has consistently held that the public has a legitimate interest in knowing the details of such an investigation. *See* Open Records Decision Nos. 470 at 4 (even if records contain highly intimate facts about governmental employee's private affairs, common law privacy does not apply unless such records are also of no legitimate interest to public), 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected), 208 at 2 (1978) (information relating to complaint against public employee and disposition of complaint is not protected under either constitutional or common law right of privacy); *see also* Open Records Decision Nos. 611 (1992) (information regarding domestic violence not categorically protected by common law privacy). In addition, you also contend that common law privacy protects financial information that you have marked. Having reviewed all of this information, we conclude that none of it is protected by privacy. You may therefore not withhold any of the submitted information from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.

We note that the submitted information contains social security numbers, which may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained

by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You inform us that “the social security numbers were not obtained pursuant to any law enacted on or after October 1, 1990.” Based on this representation, we have no basis for concluding that any of the social security numbers in the file are excepted from public disclosure on the basis of federal law. You argue, however, that the social security numbers are protected by privacy concerns. However, this office has long held that social security numbers are not the type of intimate and embarrassing information protected under common law privacy. Open Records Decision No. 169 (1977).

You also assert that the submitted information contains motor vehicle record information that is excepted from disclosure by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

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

In accordance with this section you must withhold all Texas drivers’ license numbers, vehicle identification numbers, and license plate numbers.

Finally, we note that the requested records contain information that may be excepted from disclosure under section 552.117. If the former deputy who is the subject of the request continues to be a peace officer as defined by article 2.12 of the Code of Criminal Procedure, the sheriff’s office must withhold those portions of the records that reveal his home addresses, home telephone numbers, social security number, and other information that reveals whether he has family members. Gov’t Code § 552.117(2). This information must also be withheld if the individual no longer is a peace officer but elected, prior to the receipt of this request, to have such information remain private. *Id.* § 552.117(1). If the individual is no longer a peace officer and did not make a timely election, this information may not be withheld under section 552.117. We have marked samples of the types of information that must be withheld if section 552.117 applies.

In summary, medical records may be released only in accordance with the MPA. The information that we have indicated is subject to section 552.117 must be withheld only upon a factual determination by the sheriff’s office that the named individual continues to be a peace officer or made a timely election to keep such information private. The other information that we have marked as excepted from disclosure must be withheld. All other 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 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).

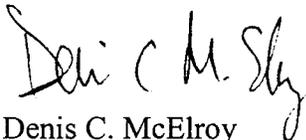
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,

A handwritten signature in black ink that reads "Denis C. McElroy". The signature is written in a cursive style with a large initial "D" and "M".

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 163271

Enc. Marked documents

c: Ms. Linda Kimmons
Criminal District Attorney
Caldwell County
P.O. Box 869
Lockhart, Texas 78644
(w/o enclosures)