



June 18, 2002

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2002-3293

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164523.

The Texas Department of Public Safety (the “department”) received a request for information relating to a named trooper. You state that you are willing to release most of the requested information but claim that the information you have submitted to this office is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibit A contains a declaration of psychological and emotional health. Section 1701.306 of the Occupations Code, which makes such a declaration confidential, provides in part:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought . . . .

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report

on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306 (emphasis added). We have marked the information that must be withheld pursuant to section 1701.306 of the Occupations Code.

We also note that Exhibit A contains mental health records made confidential by Chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) reads as follows:

Communications between a patient and a professional, and 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. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the documents that constitute mental health records, which may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

Exhibit A also contains a waiver of confidentiality, which you assert is subject to the Medical Practices Act (the “MPA”). Occ. Code §§ 151.001-165.160. We note, however, that the waiver was not created by or under the supervision of a physician, nor does it contain information taken from a medical record. Accordingly, the waiver is not subject to the MPA. *Cf.* Open Records Decision Nos. 598 (1991) (information subject to MPA includes both medical records and information obtained from those medical records), 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).

We note, however, that the waiver contains the social security number of the named trooper. Section 552.117(2) of the Government Code provides that information that relates to the home address, home telephone number, social security number, or family member information of a peace officer as defined in article 2.12 of the Texas Code of Criminal Procedure must be withheld regardless of whether the officer complied with section 552.024 of the Government Code. If the named trooper is a commissioned peace officer, the department must withhold the social security number, which we have marked.

You claim that Exhibit B is excepted from disclosure by section 552.107(1) of the Government Code. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and

the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. You state that the memorandum in Exhibit B was "prepared in the furtherance of the attorney's rendition of professional legal services." Based on your representation and our review of the submitted information, we agree that Exhibit B consists of attorney advice and opinion and may be withheld under section 552.107.

You contend that section 58.007 of the Family Code makes the information in Exhibit C confidential. We note, however, that the records in this exhibit concern conduct that occurred in 1990 and 1991. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). The records in Exhibit C concern juvenile conduct that occurred prior to January 1, 1996. Therefore, these records are confidential under the former section 51.14(d) of the Family Code and must be withheld in their entirety pursuant to section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

In summary, the department must withhold the declaration in Exhibit A and may release the mental health records only in accordance with the Health and Safety Code. The trooper's social security number must be redacted from the waiver form, which must then be released. The department may withhold Exhibit B and must withhold Exhibit C.

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

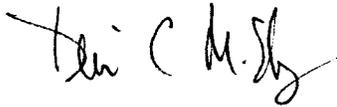
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 164523

Enc. Marked documents

c: Mr. Pat Vargas Grady  
1305 Prairie, Suite 300  
Houston, Texas 77002  
(w/o enclosures)