



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

October 6, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Dallas Police Department
1400 South Lamar Street
Dallas, Texas 75215

OR2003-7042

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188854.

The Dallas Police Department (the "department") received a request for personnel, internal affairs, and public integrity records relating to two named Dallas police officers. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.² We assume that the department has released any other information that is responsive to this request, to the extent that such information existed on the date of the department's receipt of the request. If not, then the department must release any such information at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. See *Economic Opportunities Dev.*

¹As you initially also raised sections 552.103, 552.108, and 552.119 of the Government Code, but have submitted no arguments in support of those exceptions to disclosure, we will not address the applicability of sections 552.103, 552.108, or 552.119. See Gov't Code § 552.301(e)(1)(A).

²This letter ruling assumes that the submitted representative samples of responsive information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any 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).

Corp. v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We first note that the submitted documents include an accident report that appears to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the governmental entity with two or more of the three items of information specified by section 550.065. *Id.* In this instance, the requestor has not provided two of the three required items of information. Therefore, the department must withhold the accident report that we have marked under section 550.065(b) of the Transportation Code.

The submitted documents also include information that is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. See Occ. Code § 151.001. The MPA governs the disclosure of medical records. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (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.

Id. § 159.002(a)-(c). 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. See Open Records Decision No. 598 (1991). The MPA encompasses records created by a physician or by someone acting under the supervision of a physician. See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon 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. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. *See* Open Records Decision No. 598 (1991). We have marked the submitted information that is subject to the MPA. The department must not release that information unless the MPA permits the department to do so.

Section 552.101 of the Government Code exempts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. Criminal history record information (“CHRI”) obtained from the National Crime Information Center (“NCIC”) or the Texas Crime Information Center (“TCIC”) is confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *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”) and (c)(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”); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See id.* at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See* Gov’t Code § 411.089(b). Thus, CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Likewise, CHRI held by the Texas Department of Public Safety or another criminal justice agency must be withheld from the public as provided by subchapter F of chapter 411 of the Government Code. Furthermore, when a law enforcement agency compiles information that relates to a specific individual as a criminal suspect, arrestee, or defendant, the compilation of information takes on a character that implicates the individual’s right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993). Therefore, any responsive criminal history information that was obtained from the NCIC or TCIC networks, or that is private under *Reporters Committee*, must be withheld from disclosure under section 552.101 of the Government Code.

The submitted documents also include information that is confidential under section 773.091 of the Health and Safety Code. Section 773.091 is applicable to information that relates to the provision of emergency medical services and provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(a)-(c). Section 773.091 further provides, however, that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(g). We have marked the submitted information that is confidential under section 773.091. Except as specified by section 773.091(g), the department must withhold the marked information under section 552.101 of the Government Code.

Section 611.002 of the Health and Safety Code provides for the confidentiality of information that is created or maintained by a mental health professional. This section provides in part:

(a) 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.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). 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. *See id.* § 611.001(2). 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 submitted information that is confidential under section 611.002 of the Health and Safety Code. The department must also withhold that information under section 552.101 of the Government Code.

The submitted documents also contain the social security number of a member of the public. This social security number is excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body under any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in question is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain this social security number. Thus, we have no basis for concluding that the social security number in question was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing the social security number that we have marked, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 of the Government Code also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). Common-law privacy also protects certain types of personal financial information. This office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test under *Industrial Foundation*, but 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 have marked the submitted information that the department must withhold under section 552.101 in conjunction with common-law privacy.

The department also raises section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address and telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer complies with sections 552.024 or 552.1175. We have marked the information that the department must withhold under section 552.117(a)(2) if that information relates to a peace officer.

In the event that any of the information that we have marked under section 552.117 does not relate to a peace officer, the department may nevertheless be required to withhold that information under section 552.117(a)(1). The home address, home telephone number, social security number, and family member information of a current or former civilian employee of the department or the City of Dallas is excepted from disclosure under section 552.117(a)(1) if the information relates to an individual who timely and specifically elected under section 552.024 to keep that information confidential. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117(a)(1) on behalf of a current or former civilian employee who made a request for confidentiality under section 552.024 prior to the date on which the department received the request for the information. The department may not withhold information under section 552.117(a)(1) on behalf of a current or former civilian employee who did not make a timely election to keep the information confidential. Therefore, to the extent that any of the information that we have marked under section 552.117 relates to a current or former civilian employee who timely elected under section 552.024 to keep the information confidential, the department must withhold that information under section 552.117(a)(1).

Lastly, we address the department's claim under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that 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[.]

Gov't Code § 552.130(a)(1)-(2). We have marked Texas driver's license and license plate information that the department must withhold under section 552.130.

In summary, the department must withhold the peace officer's accident report under section 550.065 of the Transportation Code. The information that is subject to the MPA must not be released unless the MPA permits the department to do so. Any criminal history information that was obtained from the NCIC or TCIC networks or that is private under *Reporters Committee* must be withheld under section 552.101 of the Government Code. The department must withhold the information that is confidential under section 552.101 in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g). The department also must withhold the information that is confidential under section 552.101 in conjunction with section 611.002 of the Health and Safety Code. The information that is protected by common-law privacy also must be withheld under section 552.101. The social security number of a member of the public may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The home address and telephone number, social security number, and family member information of a peace officer must be withheld under section 552.117(a)(2). The home address and telephone number, social security number, and family member information of a current or former civilian employee of the department or the City of Dallas is excepted from disclosure under section 552.117(a)(1) if the information relates to an individual who timely elected under section 552.024 to keep the information confidential. The department also must withhold Texas driver's license and license plate information under section 552.130. The rest of the submitted information is not excepted from disclosure and 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

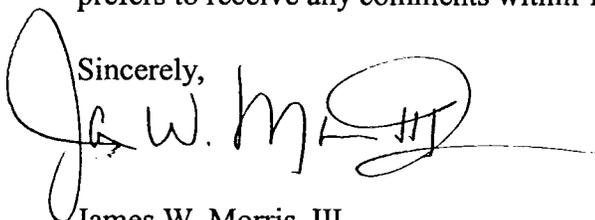
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Dep't of Pub. 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, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 18854

Enc: Submitted documents

c: Ms. Tanya Eiserer
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