



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 4, 2003

Mr. Frank D. Brown  
83<sup>rd</sup> District Attorney  
P.O. Box 9710  
Alpine, Texas 79831

OR2003-7903

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190419.

The Presidio County Sheriff's Office and the District Attorney's Office for the 83<sup>rd</sup> District each received a request for "all files, records and any other documents . . . pertaining to the arrest and investigation" of a named individual for capital murder. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information constitutes a completed investigation made of, for, or by a governmental body. Section 552.022 of the Government Code provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" constitutes "public information . . . not excepted from required disclosure . . . unless . . . expressly confidential under other law" or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). You do not claim that the submitted information is excepted from disclosure under section 552.108. You assert instead that it may be withheld pursuant to section 552.103 of the Government Code. This section is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Therefore, none of the submitted information may be withheld under section 552.103 of the Government Code.

We note, however, that the submitted information includes medical records, access to which is governed by the Medical Practice Act (the "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.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's 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. *Id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked those documents that constitute medical records and that may only be released in accordance with the MPA.

We also note that the submitted records contain fingerprint information. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses sections 560.001, 560.002, and 560.003 of the Government Code, which govern fingerprint information and provide:

Sec. 560.001. DEFINITIONS. In this chapter

(1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

- (A) the individual consents to the disclosure;
- (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
- (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003.<sup>1</sup> We note, however, that the laws making this information confidential are intended to protect individuals' privacy. *See id.* § 560.002(1)(A) (individual whose biometric identifier is at issue may consent to its release). We further note that the right of privacy lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Thus, pursuant to section 552.101 and section 560.003, the department must withhold the fingerprint information of the living individual, which we have marked, unless section 560.002 permits its disclosure.

We also note that the submitted information includes a social security number that may be confidential under federal law. Section 552.101 also encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that 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 Open Records Decision No. 622* (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security

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<sup>1</sup>These sections, which had previously been located at sections 559.001, 559.002, and 559.003 of the Government Code were recently renumbered by the 78<sup>th</sup> Legislature. *See Act of May 20, 2003, 78<sup>th</sup> Leg., R.S., ch. 1275, § 2(78), 2003 Tex. Sess. Laws 4140, 4144.*

number information, you should ensure that such information is not obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that the submitted records include motor vehicle record information. Section 552.130 of the Government Code requires the department to withhold "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." We note, however, that section 552.130 is designed to protect individuals' privacy and that the right to privacy expires at death. *See Moore*, 589 S.W.2d 489; *see also Justice*, 472 F. Supp. at 146-47; Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). Accordingly, to the extent the motor vehicle information we have marked pertains to persons who are living and vehicles in which living individuals have an interest, it must be withheld under section 552.130. Information from motor vehicle records that were issued to persons who are now deceased may not be withheld under section 552.130.

In summary, medical records may only be released in accordance with the MPA. We have marked the fingerprint information of a living individual, which must be withheld under sections 552.101 and 559.003. The social security number at issue may be confidential under federal law. Section 552.130 requires the marked motor vehicle record information to be withheld to the extent that it pertains to records issued to individuals who remain alive. All other submitted 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

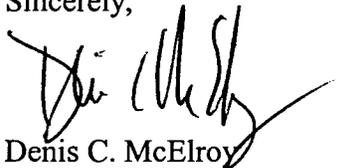
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 190419

Enc. Submitted documents

c: Mr. Walter M. Reaves, Jr.  
P.O. Box 55  
West, Texas 76691  
(w/o enclosures)