



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2004

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2004-0998

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196042.

The Bryan Police Department (the "department") received a request for information relating to a fatal automobile accident. You inform us that some of the responsive information has been released. You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we address your representation that you have released a witness statement after redacting the witness's social security number. You do not inform us that you have withheld this social security number under the previous determination issued in Open Records Decision No. 670 at 6 (2001) (governmental body may withhold social security number of peace officer, as defined by Crim. Proc. Code art. 2.12, or security officer, as defined by Educ. Code § 51.212, without necessity of requesting attorney general decision under Gov't Code § 552.301 as to whether Gov't Code § 552.117(a)(2) applies).¹ We note that a social security number may be excepted from required public disclosure under section 552.101 of

¹We note that a governmental body that seeks to withhold requested information must ask this office to determine whether the information is excepted from disclosure if there have not been a previous determination about whether the information falls within one of the exceptions. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001) (delineating elements of two types of attorney general decisions that constitute previous determinations for purposes of Gov't Code § 552.301(a)).

the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number under any provision of law enacted on or after October 1, 1990.² *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number that you have withheld 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 or requires the department to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security number in question here 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 in question, the department should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

Next, we address your claim with the regard to the submitted information. Section 552.101 of the Government Code also incorporates 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). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the

²Section 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 another statute makes confidential.

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 by the MPA. *See* Open Records Decision No. 598 (1991).

You inform us that the submitted toxicology test results were obtained from a blood sample drawn under the supervision of a physician. We note, however, that these documents consist of laboratory test results from the Texas Department of Public Safety and a document reflecting that a blood specimen was given to a law enforcement officer. You have not demonstrated, and it does not otherwise appear to this office, that any of the submitted documents consist of a communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. We therefore conclude that the submitted information is not confidential under the MPA. Thus, this information is not excepted from disclosure under section 552.101 of the Government Code and must be released to the requestor. *See also* Open Records Decision No. 478 at 4 (1987) (it is of legitimate public interest that driver on public roads may have been driving while under influence of alcohol or other intoxicants).

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,

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

JWM/sdk

Ref: ID# 196042

Enc: Submitted documents

c: Ms. Dana R. Aguilar
P.O. Box 25
Wellborn, Texas 77881
(w/o enclosures)