



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2004

Mr. William L. Ryan  
Lieutenant, Record Division  
City of Pharr Police Department  
1900 South Cage  
Pharr, Texas 78577

OR2004-5373

Dear Mr. Ryan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204643.

The Pharr Police Department (the "department") received a request for case number 03-31379. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

We first note that you have redacted from the submitted documents information for which the department has not been granted a previous determination. Section 552.301 of the Government Code requires the governmental body to submit the requested information to this office in a manner that permits us to decide whether the information is excepted from disclosure. In general, redacting information makes it impossible for this office to review those portions of the documents and results in a failure to request a decision in the manner prescribed by section 552.301. In the future, failure to comply completely with section 552.301 may result in a decision that the requested information is public and must be released in its entirety. *See Gov't Code §§ 552.006, .301(e), .302.* In this instance,

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

however, because we are able to ascertain the type of information that has been redacted and because this information may be confidential by law, we will address this redacted information. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (presumption that information is public and must be released can be overcome by compelling interest to withhold information); *see also* Open Records Decision No. 150 at 2 (1977) (compelling interest is normally that some other source of law makes information confidential or that third party interests are at stake).

Next, we note that the submitted information includes a “Texas Peace Officer’s Accident Report,” which is subject to chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this instance, we find that the requestor has not provided the department with at least two of the three pieces of information required under section 550.065(c)(4). Accordingly, we conclude that the department must withhold the accident report form pursuant to section 550.065(c)(4) of the Transportation Code.

We turn now to your arguments. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information other statutes make confidential. You first raise section 552.101 in conjunction with chapter 159 of the Occupations Code. Access to medical records is governed by the Medical Practice Act (the “MPA”). *See* 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision Nos. 598 (1991). In addition, because hospital treatment is routinely conducted under the supervision

of physicians, documents relating to diagnosis and treatment during a hospital stay also constitute protected medical records. *See* Open Decision Nos. 598 (1991), 546 (1990).

Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Such 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. Occ. Code §§ 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). Having reviewed the submitted information, we find that none of the submitted documents constitute or reflect a "record of the identity, diagnosis, evaluation, or treatment of a patient by a physician" and thus none of the submitted documents constitute medical records subject to the MPA. Accordingly, none of the submitted documents may be withheld pursuant to any provision of the MPA.

You also raise section 552.101 in conjunction with section 773.091 of the Health and Safety Code. Access to Emergency Medical Service ("EMS") records is governed by the provisions of section 773.091 of the Health and Safety Code, the Emergency Medical Services Act, which provides in part:

(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.

....

(g) The 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 . . . .

Health & Safety Code § 773.091(b), (g). We note that records that are confidential under section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." Health & Safety Code §§ 773.092(e)(4), .093. EMS records must be withheld under section 552.101 of the Government Code to the extent that they are made confidential by section 773.091(b) of the Health and Safety Code. *See* Health & Safety Code § 773.091(g) (stating confidentiality of EMS records "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"). Having reviewed the submitted documents, we find that you have neither explained nor do the documents reflect that they are records created by EMS personnel or maintained by an EMS provider. Because you have not shown the applicability of section 773.091 to these materials, you may not withhold any of the submitted information under this statute.

Next, you state that the submitted death certificate is confidential pursuant to section 58.007 of the Family Code. Section 58.007 of the Family Code provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You have not demonstrated, and it is not otherwise clear to this office, that any of the submitted information constitutes a law enforcement record or file concerning a child that is made confidential under section 58.007(c). We therefore conclude that you may not withhold the submitted death certificate under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You also seek to withhold the submitted death certificate under section 552.115 of the Government Code. Section 552.115 provides that a birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that "a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown

on the record filed with the bureau of vital statistics or local registration official.” Gov’t Code § 552.115. Because section 552.115 only applies to a death certificate maintained by the bureau of vital statistics or local registration officials, the department may not withhold the death certificate pursuant to that provision. *See* Open Records Decision No. 338 (1982).

Finally, 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 v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. 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 Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Accordingly, motor vehicle record information that pertains to persons who are living and vehicles in which living individuals have an interest 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, we conclude the department must withhold the submitted Texas Peace Officer’s Accident Report under section 550.065 of the Transportation Code. Motor vehicle record information that pertains to persons who are living and vehicles in which living individuals have an interest must be withheld under section 552.130. The remaining 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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/krl

Ref: ID# 204643

Enc. Submitted documents

c: Ms. Oralia Solano  
609 Sherrye Lane  
Pharr, Texas 78577  
(w/o enclosures)