



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2004

Mr. Loren B. Smith
Olson & Olson
2727 Allen Parkway #600
Houston, Texas 77019-2115

OR2004-5640

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204843.

The City of Friendswood (the "city"), which you represent, received a request for all documents related to an accident on a specified date involving a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Included among the documents you seek to withhold is an accident report form 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) states that except as provided by subsection (c), accident reports are privileged and confidential. 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. 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. *Id.* In this instance, the requestor has provided the department with two of the three pieces of information. Thus, you must release the accident report under section 550.065(c)(4).

We next examine your section 552.101 claim for the remaining submitted information. Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You raise section 552.101 in conjunction with sections 58.005 and 58.007 of the Family Code. Section 58.005 provides that “[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals.]” Fam. Code § 58.005(a). You do not inform us, and the submitted information does not itself reflect, that any of this information was “obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child.” *Id.* We therefore conclude that none of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.005 of the Family Code.

Section 58.007(c) of the Family Code provides as follows:

(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). Furthermore, 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. We have reviewed the remaining information and conclude that the information does not involve allegations of either delinquent conduct or juvenile conduct indicating a need for supervision. *See id.* §§ 51.02(2) (providing that in title 3 of the Family Code, “child” means person who is ten years of age or older and under seventeen years of age), .03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Thus, the

information cannot be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, section 552.101 also encompasses the doctrine of common law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Accordingly, we have marked the medical information that must be withheld under section 552.101 and common law privacy.

Social security numbers may also be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and 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 id.* We have no basis for concluding that any of the social security numbers in the remaining information are 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 Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

Lastly, some of the remaining information is excepted under section 552.130 of the Government Code. Section 552.130 provides, in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Therefore, you must also withhold the information we have marked in accordance with section 552.130.

In summary, you must withhold as confidential the information we have marked under section 552.101 and common law privacy; social security numbers may be excepted under section 552.101 in conjunction with federal law; you must withhold the information we have marked pursuant to section 552.130; and you must release all remaining information to the requestor.

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).

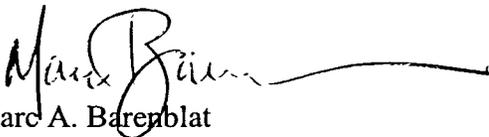
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 "Marc A. Barenblat", with a long horizontal flourish extending to the right.

Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 204843

Enc: Submitted documents

c: Ms. Shannon Thorne
333 Clay Street, Suite 4150
Houston, Texas 77002
(w/o enclosures)