



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2005

Ms. Leann Guzman
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-07053

Dear Ms. Guzman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 229614.

The City of Fort Worth (the "city") received a request for several categories of information regarding a named police officer. You state that you will release most of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially we note that Exhibit C contains a medical record, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 552.101 of the Government Code 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 made confidential by other statutes. 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). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the document in Exhibit C that may be released only in accordance with the MPA.

You claim that Exhibit C is confidential under section 1701.306 of the Occupations Code, which provides as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). After reviewing Exhibit C, we find that some of it consists of Declarations of Psychological and Emotional Health and Medical Condition. The city must withhold these declarations, which we have marked, under section 552.101 in conjunction with section 1701.306 of the Occupations Code. However, the city may not withhold any of the remaining information in Exhibit C as confidential under section 1701.306.

You claim the polygraph testing information submitted as Exhibit D is confidential under section 1703.306 of the Occupations Code. Section 552.101 also encompasses section 1703.306, which governs information obtained in the course of conducting a polygraph examination and provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination" except to certain

categories of people. Occ. Code § 1703.306(a). The requestor does not fall within any of the enumerated categories; therefore, the city must withhold the polygraph information in Exhibit D under section 552.101 in conjunction with section 1703.306 of the Occupations Code. We have marked additional information that is polygraph information and must also be withheld under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You claim that the highlighted information in Exhibit E is fingerprint information that is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You state that section 560.002 does not permit the release of the fingerprint information in this instance. Accordingly, the city must withhold the fingerprint information you have highlighted in Exhibit E under section 552.101 and section 560.003 of the Government Code.

You claim that Exhibit F consists of criminal history record information ("CHRI"), which is also encompassed by section 552.101. CHRI that is generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) 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. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2)(B). After reviewing Exhibit F, we agree that some of it consists of CHRI. Accordingly, we have marked the information that must be withheld under section 552.101 of the Government Code. The remaining information in Exhibit F is not CHRI and may not be withheld on that basis. We have marked additional CHRI in Exhibit C that must be withheld under section 552.101 of the Government Code.

We note that Exhibit C contains mental health record information. Section 611.002 of the Health and Safety Code applies to "[c]ommunications 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.” Health and Safety Code § 611.002(a); *see also* Health and Safety Code § 611.001 (defining “patient” and “professional”). 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 that portion of Exhibit C that appears to be obtained from a mental health record. However, you have failed to demonstrate that the remaining information in Exhibit C was obtained directly from a mental health record. Thus, only the mental health record information which we have marked is confidential under section 552.101 of the Government Code. section 611.002 and may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

You claim that Exhibit G and some information you have highlighted in Exhibit C is protected by common-law privacy, which is also encompassed by section 552.101. The common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental, *see* Open Records Decision Nos. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, are protected under common law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common law privacy). Accordingly, we have marked the medical and personal financial information in Exhibit G that must be withheld under section 552.101 in conjunction with common law privacy.¹

¹As our ruling on this issue is dispositive, we need not address your section 552.136 argument.

We note that section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer. You state that you have withheld information under section 552.117(a)(2) in accordance with the previous determination in Open Records Decision No. 670 (2001) (stating that governmental body may withhold peace officer's personal information from disclosure under section 552.117(a)(2) without necessity of requesting decision on that information from attorney general); *see also* Open Records Decision No. 673 (2001) (discussing types of previous determinations issued by this office). We have marked additional information in the submitted exhibits that is excepted under section 552.117(a)(2).

We also note that the submitted exhibits contain Texas-issued motor vehicle record information which is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information 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. Therefore, you must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code.

Finally, we note that the submitted exhibits contain social security numbers of private citizens. Section 552.147 of the Government Code² provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold the social security numbers we have marked under section 552.147.³

In summary, we have marked the document in Exhibit C that may be released only in accordance with the MPA. The city must withhold the marked documents in Exhibit C under section 552.101 in conjunction with section 1701.306 of the Occupations Code. The city

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

must withhold Exhibit D and the other marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The city must withhold the information you have highlighted in Exhibit E under section 552.101 and section 560.003 of the Government Code. The city must withhold the information we have marked in Exhibits C and F under section 552.101 in conjunction with chapter 411 of the Government Code. The city must withhold the marked mental health record information in Exhibit C under section 552.101 and section 611.002 of the Health and Safety Code. The city must withhold the information we have marked in Exhibit G under common-law privacy. The city must withhold the additional section 552.117(a)(2) information we have marked. The city must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the social security numbers we have marked under section 552.147 of the Government Code. 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 229614

Enc. Submitted documents

c: Kristi Bruno
777 Main St #800
Fort Worth, Texas 76102
(w/o enclosures)