



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2005

Mr. R. Kinley Hegglund, Jr.  
Senior Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2005-08627

Dear Mr. Hegglund:

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# 232703.

The North Texas Regional Narcotics Task Force (the "task force") received a request for nine categories of information pertaining to task force case logs, agents, and confidential informants, excluding the names and identifying information of any current informants. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

The task force asserts that the submitted information constitutes medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

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<sup>1</sup>To the extent any additional responsive information existed on the date the task force received this request, we assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

(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). After reviewing your arguments and the submitted information, we find that you have not demonstrated that any of the records were created by a physician or by someone under the supervision of a physician. *See* Occ. Code § 159.002(b). Thus, we conclude that the task force may not withhold any of the submitted information pursuant to the MPA.

The task force also raises sections 552.101 and 552.102 of the Government Code for the submitted information. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102. In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101.<sup>2</sup> Consequently, we will consider these two exceptions together.

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. The type 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. *Id.* at 683.

You have not submitted any arguments explaining why the submitted information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Furthermore, the information pertains to the work-related qualifications of task force officers, and is therefore of legitimate public interest. *See* Open Records Decision Nos. 659 at 5 (1999) (listing types

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<sup>2</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and it encompasses the doctrine of common law privacy. Gov't Code § 552.101.

of information that attorney general has held to be protected by right to privacy), 423 at 2 (1984) (explaining that because of greater legitimate public interest in disclosure of information regarding public employees, employee privacy under section 552.102 is confined to information that reveals “intimate details of a highly personal nature”). Thus, none of the submitted information may be withheld on the basis of common law privacy.

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov’t Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We have marked social security numbers in the submitted information that the task force must withhold under section 552.117(a)(2).<sup>3</sup>

In summary, the task force must withhold the marked social security numbers under section 552.117(a)(2) 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).

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument regarding this information.

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 Office of the Attorney General 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. 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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/jpa

Ref: ID# 232703

Enc. Submitted documents

c: Mr. Scott Henson  
American Civil Liberties Union of Texas  
P.O. Box 12905  
Austin, Texas 78711  
(w/o enclosures)