ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2006

Mr. Russell Brown
Manager of Information Servics
Bellaire Police Department
5110 Jessamine
Bellaire, Texas 77401-4495

OR2006-08652

Dear Mr. Brown:

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# 255968.

The Bellaire Police Department (the "department") received a request for "calls for Service to specifically include location and dates for all MVA major and minors wherein the disposition resulted in an accident report being made for May 18, 2006." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your general assertion that the responsive information should be withheld because the requestor will use this information to circumvent the protections provided by section 550.065 of the Transportation Code. 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). You state that the requestor has informed the department that she is seeking the calls for service in order to obtain the information listed in section 550.065(c)(4) and thus gain access to ST-3 accident report forms. But we note that section 552.204 of the

[1]The department makes claims under section 552.101 in conjunction with constitutional privacy and section 58.007 of the Family Code, as well as sections 552.117 and 552.1175 for information contained in ST-3 reports. However, as you acknowledge, the department has not submitted any ST-3 reports as they are not responsive to the instant request. Accordingly, we need not address your arguments for this information. *See generally* Gov't Code §§ 552.002, .021, .227, .351.

Government Code provides that a governmental body is not responsible for a requestor's use of information released pursuant to the Act. *See id.* § 552.204(a). Additionally, this office will generally not consider the requestor's intent when rendering a open records decision. Therefore, the department may only withhold the responsive information if it is excepted from disclosure under the Act or made confidential by law.

Next, you raise section 552.108(a) of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You argue that any information which pertains to a case "where investigation is still necessary" should be withheld under section 552.108(a)(1). Specifically, you state that "[r]elease of information on FSGI accidents . . . could result in tampering with evidence," and could "hinder the locating of evidence, interviewing of witnesses and locating of suspects." We note, however, that you have not indicated which information pertains to an ongoing criminal investigation. Therefore, we find that you have not adequately demonstrated that section 552.108(a)(1) is applicable to any of the responsive information, and therefore none of it may be withheld on that basis. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

Next, you claim that some of the responsive information is not subject to release pursuant to the Privacy Rule adopted by the United States Department of Health and Human Services, Office for Civil Rights, to implement the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov't Code §§ 552.002, .003, .021. We

therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. Open Records Decision No. 681 at 9 (2004); *Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, No. 03-04-00743-CV, 2006 WL 1649003 (Tex. App.—Austin, June 16, 2006, no. pet. h.) (disclosures under the Act fall within section 164.512(a)(1) of the Privacy Rule); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the department may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

You also claim that the responsive records contain protected medical information. 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. Section 552.101 encompasses information protected by other statutes such as the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. 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). Upon review, we conclude that none of the responsive information consists of medical records subject to the MPA. Thus, the department may not withhold any portion of the responsive information under the MPA.

You also claim that the responsive records contain protected 9-1-1 caller information. Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a

population of more than 20,000. These sections only protect the originating addresses and telephone numbers of individuals who actually called 9-1-1. The City of Bellaire is located in Harris County, which has a population of more than two million. Accordingly, we will address your claims under section 772.118.

When asserting section 772.118 of the Health and Safety Code, a governmental body must indicate whether or not it is part of a 9-1-1 district subject to that section, and whether or not the originating addresses and telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier to that 9-1-1 district. *See* Gov't Code § 52.301(e). Furthermore, the 9-1-1 callers should be identified in the submitted information. In this instance, you inform us that the reports "include call information supplied by a 9-1-1 district subject to 772.118 (Greater Harris County 911)." We have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.

Next, we address your claims under section 552.101 in conjunction with section 411.083 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Section 411.083 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 id.* § 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.* §§ 11.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. We note, however, that the definition of CHRI does not include driving record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2)(B). After reviewing the responsive information, we agree that some of it is CHRI that is excepted from required public disclosure by section 552.101. We have marked the information that must be withheld on this basis.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy 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). 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. Upon review, however, none of the submitted

information may be withheld under section 552.101 of the Government Code in conjunction with common law privacy.

We note that the submitted records contain Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[,] a motor vehicle title or registration issued by an agency of this state[, or] a personal identification document[.]" Gov't Code § 552.130. We have marked the information that the department must withhold under section 552.130.[2]

In summary, the department must withhold the following: 1) the information we have marked under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code; 2) the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411.083 of the Government Code; and 3) the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code. The remaining submitted information must be released.

You request that, in the event any of the responsive information is "found to be open for public disclosure," this office grant the department the authority to disclose all ST-3 accident report forms to any requestor regardless of the confidentiality provisions found in section 550.065 of the Transportation Code. We note, however, that section 550.065 is a statute enacted by the legislature, and this office does not possess the authority to allow any governmental body to bypass a statute's confidentiality provisions. *See generally id.* § 552.301 (indicating this office's authority when rendering open records decisions). Therefore, the department must continue to follow the legal requirements of the Act and the Transportation Code.

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).

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[2]As our ruling is dispositive for this information, we need not address your argument under subchapter C of chapter 521 of the Transportation Code.

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); *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,

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 255968

Enc. Submitted documents

c: Ms. Adriene Anderson
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(w/o enclosures)