



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2007

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2007-01356

Dear Mr. Risley:

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# 270491.

The City of Victoria (the "city") received a request for all calls to three specified addresses pertaining to the child custody and a named individual from January 2004 to the date of the request. 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.

Initially, we address your claim that the submitted records contain medical information protected by the Medical Practice Act ("MPA"). 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 protected by other statutes such as the 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 submitted information consists of medical records subject to the MPA. Thus, the city may not withhold any portion of the submitted information under the MPA.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that some of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged injury to a child. *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code, ch. 261). Thus, based on your representations and our review, we find that this information is within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, the city must withhold this information, which we have marked, under section 552.101 in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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

¹We note that if the investigation has been referred to the Department of Family and Protective Services (the "department"), a parent or other legal representative of a child who is a requestor may be entitled to access to the department's records. Fam. Code § 261.201(g).

(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. We have reviewed the responsive records and marked the information that is protected under common-law privacy. However, we find that none of the remaining information is highly intimate or embarrassing. Accordingly, the city must withhold only the information we have marked under section 552.101 in conjunction with common-law privacy.

Next, we note that the remaining information contains Texas driver's license numbers. 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 Texas driver's license numbers that the city must withhold under section 552.130.

Finally, we note that the remaining information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, the city must withhold the social security numbers we have marked under section 552.147.²

In summary, the city must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (3) the Texas driver's license numbers we have marked under section 552.130 of the Government Code, and (4) the social security numbers we have marked under section 552.147 of the Government Code. The remaining submitted 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

²We 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.

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).

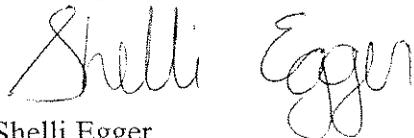
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 270491

Enc. Submitted documents

c: Mr. Richard Guerra
3302 North Cedar
Victoria, Texas 77901
(w/o enclosures)