



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2007

Ms. Julie Joe
Assistant County Attorney
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767

OR2007-03845

Dear Ms. Joe:

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# 275097.

The Travis County Sheriff's Office (the "sheriff") received a request for all information pertaining to a particular internal affairs investigation. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). A governmental body that raises section 552.108 must reasonably explain how and why section this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). We note that this exception is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). In this instance, the submitted information relates to an administrative internal affairs investigation. You do not indicate that this administrative investigation resulted in a criminal investigation

a criminal investigation or prosecution. We therefore conclude that the sheriff may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

You next assert that the requested information includes medical records. 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. Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001 *et seq.* 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.

Id. §§ 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Thus, medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Release is appropriate under the MPA upon the patient’s signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). The medical record you have marked is subject to the MPA. We have marked an additional medical record that is subject to the MPA. In this instance, however, the requestor is the patient. Accordingly, if the requestor provides written consent in accordance with section 159.004, the sheriff must release the marked documents in accordance with the MPA.

You also inform us that the submitted information includes e-mail addresses, which you have marked. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code §§ 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work

public,” but is instead the address of the individual as a government employee. Section 552.137 also does not protect from public disclosure “an e-mail address . . . provided to a governmental body by a person who has a contractual relationship with the governmental body” Gov’t Code § 552.137(c)(1). Therefore, the sheriff must withhold any personal e-mail addresses in the submitted information under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. However, to the extent that any of the e-mail addresses belong to employees of entities with which the sheriff has contractual relationships, or fall under any of the exceptions listed under subsection 552.137(c), the e-mail addresses may not be withheld under section 552.137.

In summary, the marked medical records may only be released in accordance with the MPA. The sheriff must withhold any personal e-mail addresses under section 552.137 of the Government Code, unless the sheriff received consent for their release or the e-mail addresses fall under any one of the exceptions listed under subsection 552.137(c). The sheriff must release the remaining information.¹

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

¹We note that some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests). Because such information may be confidential with respect to the general public, if the sheriff receives another request for this information from an individual other than this requestor, the sheriff should again seek our decision.

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,



Aries Solis
Assistant Attorney General
Open Records Division

AS/eb

Ref: ID# 275097

Enc. Submitted documents

c: Ms. Tammy Riojas
Travis County Sheriff's Office
501 West 11th Street
Austin, Texas 78701
(w/o enclosures)