



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2007

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2007-11937

Dear Mr. Swope:

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 #288953.

The Harris County Constable's Office (the "county") received a request for the requestor's personnel file. You state that you are providing most of the requested personnel file to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 made confidential by statute. Section 611.002(a) of the Health and Safety Code reads as follows:

Communications 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, are confidential.

Health & Safety Code § 611.002. Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient

reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Health & Safety Code §§ 611.004, .0045. We have marked the submitted information that is confidential under section 611.002 of the Health and Safety Code. We note that the requestor may have a right of access to the marked information under sections 611.004 and 611.0045 of the Health and Safety Code. Otherwise, the county must withhold the marked information under section 552.101 of the Government Code.

You assert that the requestor's L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms are excepted from disclosure pursuant to section 552.101 in conjunction with section 1701.306 of the Occupations Code. Section 1701.306 provides as follows:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(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[.] The agency shall prepare a report of [the] 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)(2), (b). Upon review, we agree that these declarations are confidential under section 1701.306 and must be withheld under section 552.101 of the Government Code.

Section 552.101 encompasses Chapter 411 of the Government Code, which deems confidential criminal history information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* 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. Upon review, we find that the county must withhold the information we have marked under section 552.101 of the Government Code as CHRI made confidential by section 411.083. We note that section 411.083 does not apply to active warrant information. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system).¹

Section 552.101 also encompasses chapter 560 of the Government Code. The submitted information contains fingerprints of a person other than the requestor. The public availability of fingerprints is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 defines “biometric identifier,” for the purposes of these sections, as meaning “a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.” Gov’t Code § 560.001(1). Section 560.002 provides that a governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(a) the individual consents to the disclosure;

(b) the disclosure is required or permitted by a federal statute or by a state statute other than [the Act]; or

(c) the disclosure is made by or to a law enforcement agency for a law enforcement purpose

Id. § 560.002. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. As there is no indication that the requestor has a right of access under section 560.002 to the fingerprints we have marked in Exhibit B, that information is confidential under section 560.003 and must be withheld from disclosure under section 552.101 of the Government Code.

You assert that the remaining information contains the driver’s license number of a person other than the requestor. Section 552.130 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 [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Accordingly, the county must withhold the Texas driver’s license numbers you

¹We note that the requestor can obtain his own CHRI from DPS. Gov’t Code § 411.083(b)(3).

have marked, as well as the additional information we have marked, pursuant to section 552.130 of the Government Code.

Finally, you assert that the submitted information contains the social security number of a person other than the requestor. Section 552.147(b) 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. Thus, the county may withhold social security numbers you have marked pursuant to section 552.147.

In summary, the county must release mental health records in accordance with chapter 611 of the Health and Safety Code. The county must withhold the L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The county must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The county must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. The county must withhold the marked Texas driver's license numbers under section 552.130 of the Government Code. The department may withhold the marked social security numbers under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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); *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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 288953

Enc. Submitted documents

c: Mr. James E. Fowler, Jr.
P.O. Box 266325
Houston, Texas 77207
(w/o enclosures)