



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

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Mr. Loren B. Smith  
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Houston, Texas 77019

OR2008-04179

Dear Mr. Smith:

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# 305904.

The City of Hempstead (the "city"), which you represent, received two requests from the same requestor for information pertaining to a named law enforcement officer and e-mail communications sent or received from mobile computer equipped police patrol units during a specified period of time. You state that the city will release most of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains criminal history record information. Section 552.101 of the Government Code. Section 552.101 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 criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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 DPS maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 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.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See Gov't Code* § 411.082(2)(B) (term CHRI does not include driving record information). Therefore, the city must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

We note the submitted information contains medical records. Access to medical records is governed by the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-165.160, and is also encompassed by section 552.101 of the Government Code. Section 159.002 of the MPA provides:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (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. Information subject to the MPA includes both medical records and information obtained from those medical records. *See Open Records Decision No. 598 (1991)*. Medical records may be released only as provided under the MPA. *Id.* Accordingly, the documents we have marked may be released only in accordance with the MPA.

Next, you assert that the submitted information contains fingerprint information that is governed by chapter 560 of the Government Code, which is also encompassed by section 552.101 of the Government Code. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See Gov't Code* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and

circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). Accordingly, the city must withhold the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

The submitted L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") are confidential under section 1701.306 of the Occupations Code, which is encompassed by section 552.101 of the Government Code. Chapter 1701 of the Occupations Code is applicable to TCLEOSE. Specifically, section 1701.306 provides as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(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 and the examining psychologist or psychiatrist. The agency shall prepare a report of each 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), (b). Therefore, the city must withhold the submitted L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

The submitted information also includes an F-5 form, Report of Resignation or Separation of License Holder, which is also a TCLEOSE report encompassed by section 552.101 of the Government Code. Section 1701.454 of the Occupations Code provides in relevant part that "[a] report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code." Occ. Code § 1701.454(a). Accordingly, the city must withhold the F-5 form we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information you have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code provides:

(a) Information is excepted from required public disclosure if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state [.]

Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411 of the Government Code and federal law. The marked medical records may only be released in accordance with the MPA. The city must also withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) the submitted L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (3) the F-5 form we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (4) the information you have marked under section 552.117(a)(2) of the Government Code; and (5) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining submitted 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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

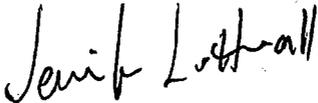
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID#305904

Enc. Submitted documents

c: Mr. Jim W. James  
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(w/o enclosures)