



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2008

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

OR2008-04626

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# 306697.

The Harris County Sheriff's Department (the "sheriff") received a request for certain e-mails sent or received by Sheriff Tommy Thomas during a specified time interval.¹ You state that some of the requested information either has been or will be released. You contend that some of the remaining information is not subject to disclosure under the Act. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered your arguments and have reviewed the information you submitted. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We begin with your argument that some of the submitted information is not subject to disclosure under the Act. The Act is applicable to "public information," as defined by

¹We note that the requestor subsequently amended his initial request for information to exclude "any document detailing any open criminal investigations or any document detailing criminal intelligence." *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

section 552.002 of the Government Code. Section 552.002(a) provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You contend that some of the e-mails submitted as Exhibits B and B-1 are personal in nature and do not constitute public information. Having reviewed the e-mails in question, we agree that some of the submitted e-mails do not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the sheriff. *See* Gov't Code § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Thus, we conclude that the e-mails we have marked in Exhibit B and the type of e-mails we have marked in Exhibit B-1 are not subject to the Act and need not be released to the requestor. The remaining e-mails, however, were created in connection with the transaction of official business by the sheriff. Therefore, these e-mails constitute "public information" as defined by section 552.022(a) and are subject to the Act. Accordingly, we will address the exceptions you claim with regard to the remaining information.

You claim that the responsive records contain information protected under the Medical Practices 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. Section 552.101 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 the records you have highlighted in yellow are not medical records subject to the MPA. Thus, the sheriff may not withhold any portion of the responsive information under the MPA.

We note that the responsive records contain information that is confidential under the doctrine of common-law privacy. Section 552.101 also encompasses the common-law right to privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

We have reviewed the information that you have highlighted in yellow and agree that some of it is protected under common-law privacy; therefore, the sheriff must withhold this information under section 552.101 of the Government Code. However, we find that the remainder of this information, which we have marked, is not protected by common-law privacy, and the sheriff may not withhold it under section 552.101 on that ground.

You claim that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. See Gov't Code § 552.117(a)(1); see also Open Records Decision No. 670 (2001) (extending section 552.117(a)(1) exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received

by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). In this case, you do not inform us, nor provide documentation showing, whether or when any employee or official whose information is at issue elected confidentiality under section 552.024. Thus, if the employees or officials whose information is at issue timely elected to keep their personal information confidential, the sheriff must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The sheriff may not withhold this information under section 552.117(a)(1) if the employees or officials at issue did not make timely elections.

Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information of a peace officer, regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) also encompasses the personal cellular telephone number and pager number of a peace officer. *See* ORD 670. We have marked the type of personal information of peace officers that must be withheld under section 552.117(a)(2) of the Government Code.

We note that some of the submitted information is excepted under section 552.137 of the Government Code.² Section 552.137 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). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c), and you do not inform us that the individuals to whom the e-mail addresses belong consent to their release. Therefore, the sheriff must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

To conclude, the e-mails we have marked in Exhibit B and the type of e-mails we have marked in Exhibit B-1 are not subject to the Act and need not be released to the requestor. Except for the information we have marked for release, the sheriff must withhold the yellow highlighted information under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked the information that must be withheld under section 552.117(a)(1), provided that the officials or employees whose information is at issue made timely requests for confidentiality under section 552.024. We have marked the type of personal information of peace officers that must be withheld under section 552.117(a)(2) of the Government Code. The sheriff must withhold the e-mail addresses we have marked

²The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.137 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 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).

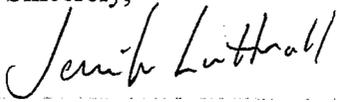
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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# 306697

Enc. Submitted documents

c: Mr. Wayne Dolcefino
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(w/o enclosures)