



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2008

Ms. Jo Spurger  
Administrative Assistant  
Somervell County Sheriff's Department  
750 E. Gibbs Boulevard  
Glen Rose, Texas 76043

OR2008-05298

Dear Ms. Spurger:

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# 307934.

The Somervell County Sheriff's Department (the "sheriff") received a request for all arrest records pertaining to a named individual, including any records regarding his medical condition, injuries, or illnesses. You state that the department has released responsive information pertaining to the arrest records to the requestor. You claim that the submitted 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 note that you have redacted portions of the information you have released. Pursuant to section 552.301, a governmental body that seeks to withhold requested information must submit to this office a copy of the information labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code §§ 552.301(a), .301(e)(2). We 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, and the sheriff has done so. Gov't Code § 552.147(b). We note, however, that the sheriff has also redacted Texas motor vehicle record information, dates of birth, information regarding "scars, marks, tattoos," a state identification number, and an FBI number. However, this office has not

issued the sheriff a previous determination with regard to any of the redacted information. Thus, the sheriff may not withhold such information without requesting a decision from this office. Moreover, section 552.301(e) requires the sheriff to submit the information in an unredacted form for our review. We will discuss whether the sheriff must withhold the Texas motor vehicle information below. As for the remaining redacted information, you have not explained why it is excepted from disclosure. Consequently, the sheriff must release the redacted information, which we have marked, to the requestor.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. *See* 45 C.F.R. § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* ORD 681 at 8; *see also* Gov't Code §§ 552.022, .003, .021. We therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W. 3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the sheriff may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 of the Government Code also encompasses the doctrine of common-law 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). Upon review, we agree that the submitted document contains medical information that is confidential under section 552.101 in conjunction with common-law privacy.

However, you indicate that the requestor has submitted a HIPAA authorization form signed by the individual whose privacy interests are at issue authorizing the release of his private information. Pursuant to section 552.023 of the Government Code, the individual whose privacy interests are at issue or his authorized representative has a special right of access to the responsive information. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information held by a governmental body that relates to the person and is protected from disclosure by laws intended to protect that person's privacy interests). Because the named individual authorizes the requestor to obtain that individual's medical information from the sheriff, you must release the information to the requestor upon receipt of a proper authorization as outlined in section 552.229 of the Government Code. See Gov't Code § 552.229 (consent to release information under section 552.023 must be in writing and signed by specific person). Accordingly, the sheriff must release the submitted record to the requestor.

Section 552.130 of the Government Code, provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130. We note that section 552.130 only applies to Texas motor vehicle record information. Therefore, the sheriff may not withhold out-of-state motor vehicle record information on this basis. We further note, section 552.130 also protects privacy interests. Pursuant to section 552.023, the requestor may have a right of access to the named individual's Texas motor vehicle record information. Accordingly, if the signed consent release authorizes the release of the individual's Texas motor vehicle record information, the sheriff must release this information, which we have marked, to the requestor. If the signed consent release does not authorize release of the individual's information, the sheriff must withhold it under section 552.130. The remaining information you have redacted must be withheld under

section 552.130, except as we have marked otherwise. Lastly, we note that the year of a license plate is confidential under section 552.130.

In summary, because the sheriff received a signed consent release from the person whose information is at issue as outlined in section 552.229 of the Government Code, the sheriff must release the medical information to the requestor pursuant to section 552.023. To the extent the signed consent release authorizes release of Texas motor vehicle information, the sheriff must release the individual's information, which we have marked. The sheriff must withhold the remaining redacted Texas motor vehicle record information under section 552.130 of the Government Code, except as we have marked otherwise. In addition to the information the sheriff has already released, portions of the remaining redacted information, which we have marked, 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,



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/ma

Ref: ID# 307934

Enc. Submitted documents

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