



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2008

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2008-08473

Dear Ms. Byles:

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# 313394.

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified motor vehicle accident. You state that you have released some of the requested information. You state that you have redacted Texas-issued motor vehicle record information pursuant to the previous determinations issued by this office in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you have redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>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.

Section 552.101 of the Government Code exempts 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. You assert that a portion of the submitted information should be withheld under section 552.101 in conjunction with the Medical Practices Act (the "MPA"). Section 159.002 of the MPA provides in part:

(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.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No.598 (1991). After reviewing the submitted information, we find that you have failed to demonstrate that the information you have marked under the MPA is information obtained directly from a medical record. Therefore, we find that none of the submitted information is subject to the MPA.

Section 552.101 also encompasses section 411.192 of the Government Code, which governs the release of information maintained by the Department of Public Safety (the "DPS") concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides, in part:

(a) The [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

Gov't Code § 411.192(a). We have marked a portion of the submitted information that is related to a concealed handgun license. It appears the department obtained that information from the DPS. In this instance, the requestor is not a criminal justice agency. Therefore, the department must withhold the concealed handgun license information we have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.

Section 552.101 also encompasses common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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). A compilation of an individual's criminal history is also highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the department asserts that "complying with this request would require the department to compile the criminal history of [two] individuals and therefore implicate the individuals' right to privacy as contemplated in *Reporters Committee*." We disagree. The present request seeks information pertaining to a specific accident, as opposed to information pertaining to individuals' criminal history. Upon review, we conclude that the department has failed to establish that the request requires it to compile the criminal history of any individual. However, we find that portions of the submitted information are highly intimate or embarrassing and not of legitimate public concern. Therefore the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note that the submitted information does include criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center, which is also encompassed by section 552.101. 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 Texas 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. 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 chapter 411, subchapter F of the Government Code. We note that the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See id.* § 411.082(2)(B). Upon review, we conclude that the department must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You state that the City of Fort Worth is part of an emergency communications district established under section 772.218. You claim that the telephone numbers you have marked were furnished by a 9-1-1 service provider. Based on your representations and our review, we agree that the department must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Finally, we note that the submitted documents contain unredacted information subject to section 552.130 of the Government Code.<sup>2</sup> 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 department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, under section 552.101 of the Government Code, the department must withhold 1) the information we have marked in conjunction with section 411.192 of the Government Code, 2) the information we have marked in conjunction with common-law privacy, 3) the CHRI we have marked in conjunction with federal law and chapter 411 of the Government Code, and 4) the telephone numbers you have marked in conjunction with

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 772.218 of the Health and Safety Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining submitted information must be released.

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). If the governmental body does not file suit over 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,

*Paige Savoie*

Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 313394

Enc: Submitted documents

c: Ms. Jackie Casbeer  
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(w/o enclosures)