



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2008

Ms. Eileen McPhee
Carls, McDonald & Dalrymple, LLP
Barton Oaks Plaza 2
901 South MoPac Expressway, Suite 500
Austin, Texas 78746

OR2008-09945

Dear Ms. McPhee:

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# 316535.

The Georgetown Police Department (the "department"), which you represent, received two requests from different requestors for all information related to a specified traffic accident. You state that the department has released most of the information to the requestors. You claim that the remaining requested 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.

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 section encompasses information protected by other statutes. You note that the submitted information includes medical records. Access to medical records is governed by the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-165.160. 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. Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See id.* §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided by the MPA. *See* Open Records Decision No. 598 (1991).

You inform us that the submitted toxicology test results were obtained from a blood sample drawn by a phlebotomist, not a physician or someone working under the supervision of a physician. We note that some of the information, which we have marked, was created by a physician and is confidential under the MPA. This information may only be released in accordance with the MPA. *See* Open Records Decision No. 598 (1991). However, you have not demonstrated, and it does not otherwise appear to this office, that any of the remaining documents consist of a communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Thus, the remaining records do not constitute medical records for purposes of the MPA, and they may not be withheld on this basis.

Section 552.101 also encompasses the common-law right of privacy, which protects information if (1) the information contains highly intimate and 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). The type 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. *See id.* at 683. Upon review, we find that the department has failed to demonstrate how the information at issue is highly intimate or embarrassing and not of legitimate public interest. *See* Open Records Decision No. 478 at 4 (1987) ("it is of legitimate public interest that a driver on public roads may have been driving while under the influence of alcohol or other intoxicants"). Therefore, the department may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

We note that the submitted documents contain information subject to section 552.130 of the Government Code.¹ 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. But section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, to the extent the motor vehicle record information we have marked pertains to a living person or a vehicle owned by a living person, it must be withheld under section 552.130; however, this information may not be withheld under section 552.130 if it pertains to a deceased individual.

In summary, the medical record we have marked may only be released in accordance with the MPA. Additionally, to the extent the motor vehicle record information we have marked pertains to a living person or a vehicle owned by a living person, it must be withheld under section 552.130. The remaining information must be released to the requestors.

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,

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

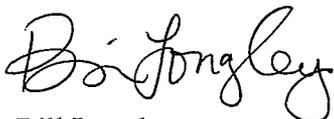
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 316535

Enc. Submitted documents

c: Mr. Joe Crews
Crews Law Firm
701 Brazos, Suite 900
Austin, Texas 78701
(w/o enclosures)

Ms. Kandi Farmer
International Claims Specialists
3050 Regent Boulevard, Suite 400
Irving, Texas 75063
(w/o enclosures)