



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2008

Mr. John W. Peeler  
Coveler & Katz, P.C.  
Two Memorial City Plaza  
820 Gessner Road, Suite 1710  
Houston, Texas 77024-8261

OR2008-10399

Dear Mr. Peeler:

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# 318511.

The Magnolia Volunteer Fire Department (the "department"), which you represent, received a request for a copy of all documents relating to a motor vehicle accident, which occurred on May 8, 2008, involving Montgomery County Emergency Services District No. 10 (the "district") owned vehicles, district representatives, and department employees and volunteers. You state that you have released a redacted copy of the responsive information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy,

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<sup>1</sup>We note that the department, in a letter dated June 6, 2008, withdrew its privacy claim under sections 552.101 of the Government Code and 552.102 of the Government Code for the fire fighter home addresses.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims and sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. Access to medical records is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the Occupations Code provides in pertinent 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.

Occ. Code §§ 159.002(a)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343

(1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991).

Medical records may only be released upon the governmental body's receipt of 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* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). We have marked the medical records that are subject to the MPA. The department may only disclose these records in accordance with the MPA.

Next, we note that the submitted information includes a CRB-3 Texas Peace Officer Crash Report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). In this instance, the requestor has not provided the department with two of the three pieces of information specified by section 550.065. Thus, the department must withhold the CRB-3 Texas Peace Officer Crash Report form that we have marked under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

We note that a portion of the submitted information may be subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a current or former official or employee of a governmental body who timely requests under section 552.024 that this information be kept confidential. We note that section 552.117 does not protect from disclosure information that concerns an individual who is merely a volunteer for the department and not a current or former department official or employee. Therefore, the department may not withhold information that pertains to volunteers under section 552.117. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

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

Whether a particular item of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, the department may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note, however, an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home). Therefore, to the extent that the information that we have marked under section 552.117 is the home telephone or personal cell phone number or family member information of a current or former official or employee of the department, such information must be withheld under section 552.117(a)(1) if the individual to whom it pertains timely requested confidentiality for the information under section 552.024. The department may not withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who did not make a timely election to keep the information confidential. Furthermore, the marked information may not be withheld under section 552.117 to the extent that it relates to a volunteer.

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. Thus, we agree that, the department must withhold the Texas motor vehicle record information you have marked pursuant to section 552.130 of the Government Code.

Next, we address the e-mail addresses that the department seeks to withhold. With respect to this information, section 552.137 of the Government Code provides in part:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
- (c) Subsection (a) does not apply to an e-mail address:
  - (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

Gov't Code § 552.137(a)-(c). Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. With the exception of the submitted e-mail address we have marked for release, the department must withhold the e-mail addresses you have marked under section 552.137(a), unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

Finally, 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. Therefore, the department may withhold the information you have marked under section 552.147.

In summary: (1) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law right to privacy; (2) the department may only disclose the records we have marked in accordance with the MPA; (3) the department must withhold the CRB-3 Texas Peace Officer Crash Report form that we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (4) to the extent that the information that we have marked under section 552.117 of the Government Code is the home telephone or personal cell phone number or family member information of a current or former official or employee of the department, and not a volunteer, such information must be withheld under section 552.117(a)(1) if the individual to whom it pertains timely requested confidentiality for the information under section 552.024 of the Government Code; (5) the department must withhold the Texas motor vehicle record information you have marked pursuant to section 552.130 of the Government Code; (6) with the exception of the

submitted e-mail address we have marked for release, the department must withhold the e-mail addresses you have marked under section 552.137(a) of the Government Code; and (7) the department may withhold the information you have marked under section 552.147 of the Government Code. The remaining 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,

A handwritten signature in black ink, appearing to read 'Jessica J. Maloney', with a long, sweeping horizontal line extending to the right.

Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/mcf

Ref: ID# 318511

Enc. Submitted documents

c: Mr. Jim Jenkins  
20519 Sunshine Lane  
Spring, Texas 77388  
(w/o enclosures)