



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2008

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2008-13568

Dear Ms. Lentz:

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# 323423.

The Williamson County Sheriff's Office (the "sheriff") received a request for a specified internal affairs investigation file for a named individual, any transcripts, summaries, recordings, or notes concerning witnesses in the investigation, e-mails regarding the individual's termination, all information used in the decision making process leading up to termination, and all written complaints filed in this investigation regarding the individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. 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.

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). 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). We have further found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990).

We agree that some of the submitted documents are medical records that are subject to the MPA. These documents, which we have identified, must be withheld under section 552.101. However, we find that the remaining documents are purely administrative and billing records that do not pertain to the diagnosis and treatment of the patient. Thus, these records may not be withheld under section 552.101 of the Government Code in conjunction with the MPA.

The submitted documents also contain emergency medical service ("EMS") records. Section 552.101 encompasses section 773.091 of the Health and Safety Code, which makes confidential EMS records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Upon review, we have marked documents that constitute confidential EMS records or information taken directly from EMS records. Thus, except for the information subject to section 773.091(g), which must be released in this instance, the sheriff must withhold these EMS records and information under section 552.101 of the Government Code in conjunction with section 773.091 of the Occupations Code.

Section 552.101 also encompasses chapter 550 of the Transportation Code. You have submitted a CRB-3 accident report form, governed by chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) 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. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requestor has not provided the sheriff with two of the three requisite pieces of information pursuant to section 550.065(c)(4). Thus, the sheriff must withhold the CRB-3 form in its entirety in accordance with section 550.065(b).

Section 552.101 also encompasses common-law privacy. Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is 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). Common-law privacy does not, however, protect all medically-related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). The submitted documents and recordings contain information pertaining to a specific medical condition and injuries sustained by an individual. We agree this medical information is intimate and embarrassing. However, in this instance, the individual's medical condition and its symptoms were alleged to be the direct cause of the police officers' reactions in this situation. Therefore, there is a legitimate public interest in the individual's medical condition

at the time of the incident. Accordingly, information pertaining to the medical condition and its symptoms is not protected by privacy.

The remaining medical information you have marked relates to the injuries sustained by this individual at the hands of the public servant and the individual's subsequent treatment for those injuries. We also find there is a legitimate public interest in information pertaining to the injuries sustained by the individual and the subsequent treatment. *See* Open Records Decisions Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Thus, this medical information is also not protected by privacy.

You also seek to withhold an individual's criminal history information under common-law privacy. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dept. 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). We find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The sheriff must withhold the marked criminal history information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you seek to withhold a police report pursuant to section 552.108 of the Government Code. We note, however, that the submitted report includes a search warrant and a return and inventory sheet that have been signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you raise section 552.108 of the Government Code for these documents, section 552.108 is a discretionary exception that protects a governmental body's interests and is therefore not "other law" that makes court records confidential for purposes of section 552.022. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, the magistrate documents we have marked may not be withheld under section 552.108. As you raise no further exceptions against the disclosure of this information, it must be released.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why

the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining portion of the police report pertains to a driving while intoxicated arrest that is currently being prosecuted by the Williamson County District Attorney's Office and that the release of the remaining information you have marked would interfere with the prosecution of this case. Based on your representation and our review, we conclude that the release of the remaining information in the report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information and the magistrate documents, the sheriff may withhold the report under section 552.108(a)(1) of the Government Code.¹

The submitted information contains the social security numbers of peace officers. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Thus, the sheriff must withhold the social security numbers of the peace officers you have marked under section 552.117(a)(2) of the Government Code.

The records also contain some information that may be subject to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure under section 552.108(b) of the Government Code.

not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(a), (b). The submitted recordings contain information about a family member of a peace officer who is not employed by the sheriff. Further, the submitted documents reveal that officer's home address and telephone number. Thus, if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b), the sheriff must withhold the personal information we have identified in the submitted recordings as well as the information we have marked under section 552.1175. If no election is made, the sheriff may not withhold this information under section 552.1175.

Section 552.130 of the Government Code exempts 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." *Id.* § 552.130(a)(1), (2). The sheriff must withhold the information you have marked, as well as the Texas motor vehicle information contained in the submitted recordings, under section 552.130 of the Government Code.

In summary, the sheriff must withhold the medical records that we have marked in accordance with the MPA. With the exception of information subject to section 773.091(g), the sheriff must withhold the EMS records and information taken directly from them under chapter 773 of the Health and Safety Code. The sheriff must withhold the CRB-3 form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The sheriff must withhold the marked criminal history information you have marked under common-law privacy. With the exception of basic information and the magistrate documents, the sheriff may withhold the report you have marked under section 552.108(a)(1) of the Government Code. The sheriff must withhold its deputies' social security numbers under section 552.117(a)(2) of the Government Code. If the police officer, who is not employed by the sheriff, elects to restrict access to his home address, telephone number, and family member information in accordance with section 552.1175(b), then the sheriff must withhold the police officer's this information under section 552.1175. If no election is made, then the sheriff must release this police officer's information. The sheriff must withhold the information you have marked, as well as the Texas motor vehicle

information contained in the submitted recordings, under section 552.130. The remaining information must be released.²

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.

²We 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.

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 cursive script that reads "Olivia A. Maceo".

Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/sdk

Ref: ID# 323423

Enc. Submitted documents

c: Mr. Randy Doubrava
General Counsel
Texas Municipal Police Association
P.O. Box 2294
Austin, Texas 78768
(w/o enclosures)