



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 5, 2008

Mr. Christopher D. Taylor  
Assistant City Attorney  
City of Waco Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2008-16613

Dear Mr. Taylor:

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# 329345. (Waco reference LGL-09-917)

The Waco Police Department (the "department") received a request for any information pertaining to eighteen specified incidents. You state you have released some information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that one of the reports submitted within Exhibit 3 is a juvenile law enforcement record subject to section 58.007(c) of the Family Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by statute.<sup>1</sup> Section 552.101 encompasses section 58.007 of the Family Code, which provides that juvenile law enforcement records relating to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential. Section 58.007(c) provides as follows:

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<sup>1</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).

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). We have marked a police report pertaining to juvenile delinquent conduct that occurred after September 1, 1997. This report is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.<sup>2</sup>

We now turn to your arguments against disclosure of the remaining police reports. You claim the remaining reports within Exhibit 3 are all excepted from disclosure under sections 552.108(a)(1), 552.108(a)(2), and 552.108(b)(2). Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this report.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(2). Generally speaking, section 552.108(a)(1) is mutually exclusive of sections 552.108(a)(2) and 552.108(b)(2). Section 552.108(a)(1) protects information the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, sections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In this instance, you state that the remaining reports within Exhibit 3 are subject to both sections 552.108(a)(1) and 552.108(a)(2). You refer this office to a memorandum from the department's records office in support of your assertions. We note that this memorandum indicates that all but one of the remaining reports within Exhibit 3 pertain to criminal investigations that are "suspended." You provide no arguments explaining how release of any of these reports pertaining to suspended investigations would interfere with the detection, investigation, and prosecution of crime. Furthermore, you do not explain how any of these reports pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Thus, we find that neither section 552.108(a)(1), section 552.108(a)(2), nor section 552.108(b)(2) is applicable to those reports within Exhibit 3 pertaining to suspended investigations. However, upon review of the submitted memorandum, we do find that report No. 04-069253 clearly relates to an active criminal investigation. Thus, based on your representations and our review of the information at issue, we conclude that the release of report No. 04-069253 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. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore find that section 552.108(a)(1) is applicable to report No. 04-069253.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See Open*

Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, except for basic information, report No. 04-069253 may be withheld under section 552.108(a)(1) of the Government Code.

We note that report No. 02-079671 contains medical records. Section 552.101 encompasses the Medical Practices Act ("MPA"), which applies to medical records. Occ. Code §§ 151.001-165.160. Section 159.002 provides in pertinent part:

(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(b), (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). We have also 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 have marked the medical records within Report No. 02-079671 that may only be released in accordance with the MPA.

Report No. 01-064846 contains fingerprint information. Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release a biometric identifier of an individual, such as fingerprints, except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). We have marked fingerprint information within Report No. 01-064846 that must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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. You have highlighted Texas-issued motor vehicle registration information from some of the police

reports within Exhibit 4. We have marked additional Texas-issued motor vehicle registration information and driver's license information that must be withheld from both Exhibits 3 and 4. The department must withhold this marked information pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the report we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code in its entirety. Except for basic information, the department may withhold report No. 04-069253 under section 552.108(a)(1). The department may only release the marked medical records in accordance with the MPA, and the department must withhold the marked fingerprint information under section 560.003 of the Government Code. Finally, the department must withhold the information it has marked, as well as the information we have marked, under section 552.130 of the Government Code. The remaining information 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). 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 329345

Enc. Submitted documents

c: Requestor  
(w/o enclosures)