



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2009

Mr. Cary Bovey  
Bovey & Bojorquez, L.L.P.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2009-00016

Dear Mr. Bovey:

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# 331237.

The City of Navasota (the "city"), which you represent, received a request for the retirement application of a deceased former employee. You claim that the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 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 information made confidential by statute, such as section 855.115 of the Government Code. Section 855.115(a) protects "[i]nformation contained in records that are in the custody of the [Texas Municipal Retirement System.]" In this instance, the submitted information is held by the city rather than the Texas Municipal Retirement System. Therefore, we find that the submitted information is not confidential under section 855.115 of the Government Code, and thus it may not be withheld on that basis under section 552.101.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* 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. 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 when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990).

Medical records must be released upon 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. Occ. Code §§ 159.004, .005. Medical records pertaining to a deceased patient may only be released upon the signed consent of the deceased's personal representative. *See id.* § 159.005(a)(5). 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). The medical records we have marked are confidential under the MPA. This information may only be released in accordance with the MPA. *See* ORD 598.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision Nos. 545 (1990), 523 (1989) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). However, the right of privacy is purely personal and lapses upon death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, *writ ref'd n.r.e.*); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). Therefore, we conclude that the deceased former employee's privacy right in the information at issue has lapsed, and it may not be withheld on this basis.

However, if the release of information about a deceased person reveals highly intimate or embarrassing information about living persons, the information must be withheld under common-law privacy. *See* Attorney General Opinion JM-229. In this case, the submitted information reveals the identity of the deceased former employee's primary beneficiary. Beneficiaries have a common-law right of privacy in financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 373 at 3 (1983). Accordingly, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that section 552.117 of the Government Code may apply to some of the remaining information.<sup>1</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. Because the protection afforded by section 552.117 includes "current or former" officials or employees, we note that the protection generally does not lapse at death. However, because the protection of social security numbers under section 552.117 is intended to solely protect the privacy of the employee, it lapses at death. *See Moore*, 589 S.W.2d 489; *see also* Attorney General Opinions JM-229; H-917. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it was made. *See* Open Records Decision No. 530 at 5 (1989). Because you do not inform us that the employee at issue made a timely election under section 552.024, we must rule conditionally. If the employee did not make a timely election to keep his information confidential, the city may not withhold the information we have marked under section 552.117. However, if the employee timely elected to keep his personal

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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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information confidential, the city must withhold the information we have marked under section 552.117.

We note, however, that the requestor in this instance may have a right of access under section 552.023 of the Government Code to some of the information protected by section 552.117.<sup>2</sup> Thus, if the requestor is the authorized representative of any of the individuals whose information is at issue and has a right of access under section 552.023, then the city may not withhold the marked information pertaining to that individual from the requestor under section 552.117 of the Government Code.

Even if the former employee failed to make a timely election under section 552.024, you assert that the social security numbers contained in the remaining information are excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. As noted above, the requestor may be the authorized representative of these individuals; if so, she has a right to their social security numbers. *See generally id.* § 552.023(b). If the requestor is not the individuals’ authorized representative, the city may withhold the social security numbers pursuant to section 552.147 of the Government Code.

Finally, you seek to withhold the deceased employee’s Texas motor vehicle record information under section 552.130 of the Government Code, which 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. We note that the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272 at 1. The Texas motor vehicle record information you have marked pertains to a deceased individual. Therefore, the city may not withhold that information under section 552.130 of the Government Code.

In summary, the marked medical records may only be released in accordance with the MPA. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must generally withhold the information we have marked under section 552.117 of the Government Code if the named former employee made a timely election under section 552.024 of the Government Code; however, the city may not withhold information marked under section 552.117 to which the requestor has a right of access under section 552.023. If the

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<sup>2</sup>Section 552.023 of the Government Code provides a person or a person’s authorized representative a special right of access to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person’s privacy interests.

requestor is the authorized representative of the individuals whose social security numbers are at issue, she has a right to these social security numbers; otherwise, the city may withhold the social security numbers 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).

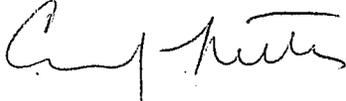
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "Cindy Nettles". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jb

Ref: ID# 331237

Enc. Submitted documents

c: Requestor  
(w/o enclosures)