



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-01478

Dear Ms. Rangel:

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# 334034.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all information regarding a specified incident involving a named inmate of the Fort Bend county jail, as well as information regarding similar incidents at the same facility. You claim the submitted incident reports, photographs, audio recordings, and other investigation records are 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.

Initially, we note some of the submitted information was created after the date the request for information was received. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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 exception encompasses information other statutes make confidential. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides, in 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 that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded 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). You claim some of the submitted information is protected under the MPA. You have failed to demonstrate, however, how any of the submitted information either was created by or under the supervision of a physician, or contains the identity, diagnosis, evaluation, or treatment of a patient by a physician. Thus, none of the submitted information may be withheld on the basis of the MPA.

Section 552.101 also encompasses laws that make criminal history record information (CHRI) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the sheriff must withhold the criminal history record information we have

marked in the submitted investigation documents under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

You claim the submitted fingerprints are confidential under section 560.003 of the Government Code, which is also encompassed by section 552.101. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 provides, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). The fingerprints at issue belong to the inmate named in the request. The requestor states he was hired by the inmate’s family to investigate the specified incident involving the inmate. We are unable to determine whether or not the requestor is acting as the inmate’s authorized representative. Thus, if the sheriff determines the requestor is the authorized representative of the inmate whose fingerprints are at issue, the requestor has a right of access to that information under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the sheriff must release the submitted fingerprints, which we have marked, under section 560.002 of the Government Code. If, however, the sheriff determines the requestor is not the authorized representative of the named inmate, the sheriff must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included, among other things, information relating to attempted suicide. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in cases of attempted suicide, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of the incident, all of the information pertaining to that incident must be withheld to protect the individual’s privacy. The requestor has requested information regarding the attempted suicide of the inmate named in the request. Therefore, withholding only the named inmate’s identity or certain details of the incident from the requestor would not preserve the named inmate’s common-law right of privacy. Accordingly, the submitted information pertaining to the named inmate’s attempted suicide, which we have marked, is generally subject to common-law privacy.

As previously stated, however, the requestor may be the named inmate’s authorized representative. Section 552.023 of the Government Code gives a person or that person’s authorized representative a “special right of access, beyond the right of the general public,

to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See* Gov't Code § 552.023(a). As such, the requestor may have a right of access to the named inmate's information we have marked. Therefore, if the sheriff determines the requestor is the named inmate's authorized representative, the named inmate's information we have marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy, and must be released to the requestor. If, however, the sheriff determines the requestor is not the named inmate's authorized representative, the sheriff must withhold the information pertaining to the named inmate we have marked under section 552.101 in conjunction with common-law privacy.

The requestor also seeks information pertaining to attempted suicides by other inmates at the same facility where the named inmate was being held. For that information, the requestor knows the nature of the incidents, but does not know the identities of the inmates involved. Therefore, we have marked those inmates' identifying information, which the sheriff must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim some of the remaining information is protected under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Section 552.130 protects privacy interests. In this case, the remaining information includes the Texas driver's license number of a member of the named inmate's family. As previously noted, the request states the named inmate's family hired the requestor. We are unable to determine whether or not the requestor is acting as the authorized representative of this family member. If the sheriff determines the requestor is the authorized representative of the individual to whom the driver's license number belongs, the requestor has a right of access to this information, and it may not be withheld under section 552.130. *Id.* § 552.023(a), (b). If, however, the sheriff determines the requestor is not the authorized representative of the individual, the driver's license number, which we have marked, must be withheld under section 552.130 of the Government Code. The remaining information also includes Texas driver's license numbers that do not belong to the named inmate or his family members. We have marked this information, which must be withheld under section 552.130 of the Government Code.

You claim the social security numbers in the remaining information are excepted from disclosure under section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ *Id.* § 552.147. Therefore, the sheriff may withhold the social security numbers we have marked under section 552.147 of the Government Code.

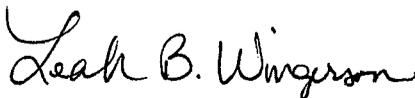
¹We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the sheriff must withhold the criminal history record information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. If the requestor is not the authorized representative of the named inmate, the sheriff must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. If the requestor is not the named inmate's authorized representative, the sheriff must withhold the information pertaining to the named inmate we have marked under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the information pertaining to the other inmates we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the marked Texas driver's license number of the named inmate's family member under section 552.130 of the Government Code, if the requestor is not the authorized representative of the family member. The sheriff must withhold the marked Texas driver's license numbers that do not belong to the named inmate or his family members under section 552.130 of the Government Code. The sheriff may withhold the marked social security numbers under section 552.147 of the Government Code. The remaining information must be released.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cc

²We note, if the requestor is the authorized representative of the named inmate or his family member at issue, the information to be released contains information that is generally confidential with respect to the general public. If the sheriff receives another request for this information from a different requestor, the sheriff should again seek a decision from this office.

Ref: ID# 334034

Enc. Submitted documents

cc: Requestor
(w/o enclosures)