



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2009

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-04083

Dear Ms. Middlebrooks:

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# 338364 (DPD PIR 09-0160).

The Dallas Police Department (the "department") received a request for all information pertaining to case number 0113677-N. You claim the submitted incident reports, witness statements, medical records, audio recording, and other investigative records are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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, such as section 261.201 of the Family Code, which provides in relevant part:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert the submitted investigation records were used and developed in an investigation of suspected child abuse under chapter 261; however, the records reflect they are part of an investigation of a child's homicide. Thus, you have failed to demonstrate the submitted information was used or developed in an investigation by the department of child abuse under chapter 261. We note, however, the submitted information contains a report created by Child Protective Services ("CPS") that was used or developed in an investigation by CPS of alleged child abuse or neglect under chapter 261. Thus, we find the CPS report, which we have marked, is within the scope of section 261.201. You have not indicated CPS has adopted a rule that allows for the release of these records in this instance; therefore, we assume that no such regulation exists. Therefore, the department must withhold the CPS report we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). The remaining information is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) 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). You claim the juvenile arrest record in the remaining information is confidential under section 58.007(c). We note the juvenile arrest record involves a sixteen year old individual arrested for possession of a controlled substance after September 1, 1997. Thus, we find this record involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find the juvenile arrest record we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code is applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). This section makes the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand the City of Dallas is part of an emergency communication district established under section 772.318. You represent the telephone number and address you have marked in the submitted EMS Dispatch Record constitute the originating telephone number and address of a 9-1-1 caller provided by a 9-1-1 service supplier. Based on this representation and our review, we conclude the city must withhold the telephone number and address you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

We note the remaining information contains medical records, which are governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 552.101 also encompasses the MPA, which 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). This office has determined 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). We note medical records involving a minor may be released under the MPA on the parent's or legal guardian's signed, written consent, provided 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. 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). We have marked a child's medical records, which may only be released in accordance with the MPA. ORD 598.

Section 552.101 also encompasses section 411.153 of the Government Code, which provides:

(a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under the public information law, Chapter 552.

(b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.

(c) An offense under this section is a state jail felony.

(d) A violation under this section constitutes official misconduct.

Gov't Code § 411.153. A "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. *See id.* § 411.141(6), (7). "Forensic analysis" is defined as "a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action." *See* Crim. Proc. Code art. 38.35(4); *see also* Gov't Code § 411.141(10) (providing that "forensic analysis" has meaning assigned by

Crim. Proc. Code art. 38.35). A "DNA database" means "one or more databases that contain forensic DNA records maintained by the director [of the Department of Public Safety ("DPS)]." Gov't Code § 411.141(5); *see id.* § 411.001(3).

The director of DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.144(a), .142(h) (requiring director to establish standards for DNA analysis). Section 411.144 of the Government Code provides that a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 shall comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C § 28.82(a). The director of DPS has adopted rules that govern the regulation of forensic DNA laboratories in this state. *See* 37 T.A.C. §§ 28.81, .82 (describing minimum standards by which a forensic DNA laboratory must abide); *see also* Gov't Code § 411.147(b). The director of DPS may release a DNA record in certain instances, including to a criminal justice agency for criminal justice or law enforcement purposes. *See id.* § 411.147(c).

In this instance, some of the remaining information consists of DNA records relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. The information in question is contained in the department's file related to a criminal case. The information we have marked appears to be the result of forensic DNA analyses performed by a DNA laboratory in accordance with DPS regulations. Thus, we conclude the department must withhold the DNA records we have marked under section 552.101 of the Government Code in conjunction with section 411.153 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). We have marked financial aspects of an apartment rental agreement in the remaining information that are of no legitimate public concern. Accordingly, the department must withhold the marked financial information under section 552.101 of the Government Code in conjunction with common-law privacy.

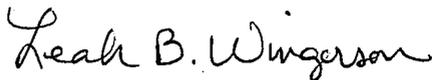
You claim some of the remaining information is confidential under section 552.130, which excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Therefore, the department must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the marked CPS report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; the marked juvenile arrest record under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; the marked telephone number and address in the EMS Dispatch Record under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; and the marked Texas motor vehicle record information under section 552.130 of the Government Code. The marked medical records may only be released in accordance with the MPA. 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/dls

Ref: ID# 338364

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a government 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.