



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2009

Ms. Donna M. Butler
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-05710

Dear Ms. Butler:

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# 341289 (SA File No. 2009-2671).

The City of San Antonio (the "city") received a request for the training records of the city police officer in charge of standard field sobriety testing and breath testing, as well as information regarding four named city police officers, including (1) disciplinary records; (2) complaints made against the officers; (3) employment records; (4) civil service records; (5) payroll and other compensation records; and (6) training records. You indicate most of the requested information has been provided to the requestor. We note you have redacted a police officer's social security number.¹ You claim portions of the submitted crash reports, citation, internal affairs investigation report, and medical 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 information.

¹We note the requestor has consented to the redaction of police officers' photographs, home addresses, social security numbers, telephone numbers, and family member information. We further note the previous determination issued in Open Records Decision No. 670 (2001) authorizes the city to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

You claim the submitted ST-3 officer's accident reports are confidential under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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 information other statutes make confidential, such as section 550.065(b) of the Transportation Code, which states except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the 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 of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the city must withhold the submitted ST-3 officer's accident reports we have marked pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

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. 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). 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). 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 minor's medical records, which may only be released in accordance with the MPA.² Open Records Decision No. 598 (1991).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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. We note the remaining information contains identifying information of a juvenile offender. This office has found common-law privacy applies to the identifying information of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. Thus, the city must withhold the juvenile-identifying information we have marked 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 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. Gov't Code § 552.130(a)(1), (2). Therefore, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

We note the remaining information contains an insurance policy number. Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

²As our ruling for this information is dispositive, we need not address your argument against disclosure for this information.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

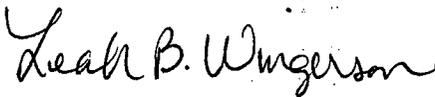
Id. § 552.136. We conclude the insurance policy number we have marked constitutes an access device number for purposes of section 552.136. Thus, the city must withhold the marked insurance policy number under section 552.136 of the Government Code.

In summary, the city must withhold under section 552.101 of the Government Code the marked officer's accident reports in conjunction with section 550.065(b) of the Transportation Code, and the marked information in conjunction with common-law privacy. The marked medical records may only be released in accordance with the MPA. The marked Texas motor vehicle record information must be withheld under section 552.130 of the Government Code, and the marked insurance policy number must be withheld under section 552.136 of the Government Code. The remaining information must be released.³

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

³We note the remaining information contains a social security number that does not belong to a police officer. 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.

Ref: ID# 341289

Enc. Submitted documents

c: Requestor
(w/o enclosures)