



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2009

Mr. J. Landon K. Schmidt
Assistant Criminal District Attorney
Kaufman County
100 West Mulberry Street
Kaufman, Texas 75142

OR2009-07155

Dear Mr. Schmidt:

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# 344283.

The Kaufman County District Attorney's Office (the "district attorney") received two requests for the district attorney's prosecution file in Cause No. 25534-86. The second request also seeks all videos, photos, witness statements, and sketches pertaining to Cause No. 25534-86. You state some of the responsive information has been released. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 section encompasses section 411.083 of the Government Code, which provides that criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center, is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or from other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential

¹ Although you raise section 552.108(a)(1) of the Government Code, you make no arguments to support this exception. Accordingly, we find that the district attorney has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the 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. *See 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. Thus, 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find that some of the information contained within Exhibit 2 constitutes confidential CHRI. Accordingly, the district attorney must withhold this information, which we have marked, under section 552.101 in conjunction with section 411.083. However, none of the remaining information in Exhibit 2 constitutes CHRI for the purposes of section 411.083, therefore, no portion of the remaining information may be withheld on such basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps) and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You contend that the remaining information in Exhibit 2 contains criminal history compilations that are protected by common-law privacy. However, upon review, we conclude that the remaining information does not constitute criminal history compilations that implicate an individual's right to privacy under section 552.101. However, we find a portion of Exhibit 5 constitutes highly intimate or embarrassing information of no legitimate

public concern and the district attorney must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

You also raise section 552.101 in conjunction with article 20.02 of the Texas Code of Criminal Procedure, which provides in part that “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). You state that Exhibit 3 consists of a “type-written note used by the grand jury in deciding whether to indict the case[.]” Upon review, we conclude that Exhibit 3 is confidential under article 20.02(a) of the Texas Code of Criminal Procedure, and the district attorney must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 513 at 4 (1988) (information must be withheld if its release would reveal grand jury’s deliberations).

You seek to withhold Exhibit 4 pursuant to section 552.101 of the Government Code in conjunction with the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(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(b), (c). This office has concluded 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 on 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. *See* 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); ORD 565 at 7. We have marked information in Exhibit 4 that is subject to the MPA and the district attorney may only disclose this information in accordance with the MPA. *See* Open Records Decision No. 598 (1991).

We note that the remaining information in Exhibit 4 is subject to chapter 611 of the Health and Safety Code, which is encompassed by section 552.101, and provides for the

confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* ORD 565. These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Health & Safety Code § 611.004, .0045. We have marked the information in Exhibit 4 that is subject to section 611.002 of the Health and Safety Code. These records may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code. Exhibit 5 contains a CRB-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) of the Transportation Code provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) 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 pieces of information specified by the statute. *Id.* In this instance, the requestors have not provided the district attorney with two of the required pieces of information. Thus, you must withhold the accident report, which we have marked, in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

You have marked portions of the remaining information in Exhibit 5 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 agree the district attorney must withhold the Texas motor vehicle record information you have marked, in addition to the information we have marked in Exhibit 2, under section 552.130 of the Government Code.

Finally, you raise section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. We agree the district attorney may withhold the social security number you have marked in Exhibit 5 under section 552.147.²

In summary: the district attorney must withhold (1) the information we have marked in Exhibit 2 under section 411.083; (2) Exhibit 3 pursuant to article 20.02(a) of the Texas Code of Criminal Procedure; (3) the information we have marked in Exhibit 4 under the MPA unless it receives written consent for release that complies with sections 159.004 and 159.005 of the MPA; (4) the marked mental health records in Exhibit 4 under section 611.002 of the Health and Safety Code unless the requestors are authorized to obtain any of the information under sections 611.004 and 611.0045; (5) the accident report in Exhibit 5, which we have marked, in its entirety pursuant to section 550.065(b) of the Transportation Code; (7) the information we have marked in Exhibit 5 under common-law privacy; and (6) the information you have marked in Exhibit 5 and the information we have marked in Exhibit 2 under section 552.130. The social security number you have marked may be withheld under section 552.147. The remaining information must be released.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

²We note that 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# 344238

Enc. Submitted documents

c: Requestor (2)
(w/o enclosures)