



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2009

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

OR2009-18161

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# 365116.

The Fort Bend County Sheriff's Department (the "sheriff") received a request for a specified investigative file and personnel records of a specified individual. You contend that under section 552.028 of the Act, the sheriff is not required to respond to the request for information. Alternatively, you claim the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor and an interested third party. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Section 552.028 of the Government Code provides in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You assert the requestor made the request for information as an agent of an incarcerated individual. After reviewing your assertions as well as the comments submitted by the requestor, we find the sheriff must comply with this request for information. Accordingly, we will address your arguments against disclosure under the Act.

Initially, we note the requestor has specifically excluded the W-4 form, peace officers' home addresses and telephone numbers, driver's license information, vehicle registration information, and social security numbers from her request. Thus, any such information 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.

We further note you redacted certain names from the submitted records. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, that you have been authorized to withhold the names without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As you do not raise any exceptions to disclosure of the redacted names, they must 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. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, 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 this 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 this chapter 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 this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Exhibit B is the sheriff's internal affairs investigation of a deputy's involvement in a child's death. Although there are references in the internal affairs records to the abuse incident which led to the child's death, the internal affairs records were not used or developed in the investigation of the child's death. However, included in Exhibit B are records from the Rosenberg Police Department ("Rosenberg"), which you state is the agency that investigated the child's death. Exhibit B also includes a DVD recording which was used in the investigation of the child's death. The Rosenberg records and the DVD recording, which we have marked, are within the scope of section 261.201 of the Family Code.

The requestor asserts, however, that certain information from the child abuse records must be released under section 261.203 of the Family Code. Section 261.203 provides as follows:

(a) Not later than the fifth day after the date the [Texas Department of Family and Protective Services ("DFPS")] receives a request for information about a child fatality with respect to which [DFPS] is conducting an investigation of alleged abuse or neglect, [DFPS] shall release:

- (1) the age and sex of the child;
- (2) the date of death;
- (3) whether the state was the managing conservator of the child at the time of the child's death; and
- (4) whether the child resided with the child's parent, managing conservator, guardian, or other person entitled to possession of the child at the time of the child's death.

(b) If, after a child abuse or neglect investigation is completed, [DFPS] determines a child's death was caused by abuse or neglect, [DFPS] shall promptly release the following information on request:

...

- (2) for cases in which the child's death occurred while the child was living with the child's parent, managing conservator, guardian, or other person entitled to possession of the child:

(A) a summary of any previous reports of abuse or neglect of the deceased child or another child made while the child was living with that parent, managing conservator, guardian, or other person entitled to possession of the child;

(B) the disposition of any report under Paragraph (A)[.]

Id. § 261.203(a), (b)(2)(A)-(B). Section 261.203 of the Family Code requires DFPS to release certain information related to a child fatality investigation that DFPS conducts as an abuse or neglect investigation. Because the legislature has determined section 261.203 applies only to a request to DFPS, section 261.203 is not applicable in this instance, because the sheriff received the open records request. As you have not indicated Rosenberg has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, the Rosenberg records and the DVD recording we have marked are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note Exhibits D and F contain L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms. Section 1701.306 of the Occupations Code, which is encompassed by section 552.101 of the Government Code, provides in relevant part as follows:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report

on file in a format readily accessible to the commission. A declaration is not public information.¹

Occ. Code § 1701.306(a), (b). Therefore, the sheriff must withhold the L-2 and L-3 declarations we have marked in Exhibits D and F under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.²

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). Section 1701.454 provides as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Id. § 1701.454. Exhibits E and G contain F-5 forms. The F-5 form in Exhibit E indicates the officer was terminated for a violation of the law other than a traffic offense. Therefore the F-5 form in Exhibit E may not be withheld under section 552.101 of the Government Code in conjunction with 1701.454 of the Occupations Code. Regarding the F-5 form in Exhibit G, the officer at issue did not resign due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, we conclude the sheriff must withhold the F-5 form in Exhibit G pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses medical records, which are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²As our ruling is dispositive, we need not address your argument against disclosure of the information contained in the L-2 and L-3 forms in Exhibit F. We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision.

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 a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). You claim the remaining information in Exhibit F is confidential under the MPA. You do not explain, nor does it appear, however, that the remaining document in Exhibit F was created or maintained by a physician or someone under the supervision of a physician. Therefore, the remaining document in Exhibit F may not be withheld under section 552.101 in conjunction with the MPA.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The sheriff may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made requests for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note information in Exhibit E may be excepted from disclosure under section 552.117(a)(1). You have not informed us, however, that the employee whose information is at issue timely chose to not allow public access to her personal information. Therefore, if the employee timely elected to withhold her home address and telephone number, the sheriff must withhold the home address and telephone number we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employee did not timely elect to withhold her home address and telephone number, then this information must be released.

You indicate family member information of a peace officer in Exhibit E is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Accordingly, the sheriff must withhold the family member information we have marked in Exhibit E under section 552.117(a)(2).

In summary, the sheriff must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff must withhold the L-2 and L-3 declarations we have marked in Exhibits D and F under section 552.101 in conjunction with section 1701.306 of the Occupations Code. The sheriff must withhold the F-5 form in Exhibit G pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. If the employee whose information is at issue timely elected to withhold her home address and telephone number, the sheriff must withhold that information in Exhibit E pursuant to section 552.117(a)(1) of the Government Code. The sheriff must withhold the family member information we have marked in Exhibit E under section 552.117(a)(2). The remaining responsive information must be released in this instance.

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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/sdk

Ref: ID# 365116

Enc. Submitted documents

c: Requestor
(w/o enclosures)