



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 13, 2010

Ms. Katie Lentz
Open Records
Williamson County Sheriff
508 South Rock Street
Georgetown, Texas 78626

OR2010-00663

Dear Ms. Lentz:

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# 367105.

The Williamson County Sheriff's Office (the "sheriff") received a request for all information pertaining to a specified incident involving the requestor, including any internal affairs investigation information. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a CRB-3 accident report that appears to have been completed pursuant to 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."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 550.065(b) of the Transportation Code, which states that, except as provided by subsection (c) and (e), CRB-3 accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) 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).

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

Under this provision, a 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.* Here, the requestor has provided the sheriff with two of the required pieces of information. Thus, the sheriff must release the marked CRB-3 accident report to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

We note the remaining information includes medical records. Section 552.101 also encompasses the Medical Practices Act (the "MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in relevant 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.

Occ. Code § 159.002(a), (b), (c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). We have found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Medical records must be released on receipt of 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); Open Records Decision No. 565 at 7 (1990). We have marked medical records that the sheriff must withhold under the MPA, unless the sheriff receives written consent for release of those records that complies with section 159.005(a)(5) of the MPA.

Section 552.108(a)(2) of the Government Code excepts "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution

of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(b)(2) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(b)(2). A governmental body claiming sections 552.108(a)(2) or 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state that the submitted information is related to a concluded investigation that did not result in a conviction or deferred adjudication. We note that some of the information you seek to withhold under sections 552.108(a)(2) and section 552.108(b)(2) consists of an internal affairs investigation that is purely administrative in nature and did not result in a criminal investigation. Thus, you may not withhold the internal affairs information under section 552.108(a)(2) or 552.108(b)(2). However, based on your representation and our review, we conclude that section 552.108(a)(2) is generally applicable the information we have marked.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold the information we have marked under section 552.108(a)(2) of the Government Code.²

Section 552.130 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. Upon review, we find that one of the submitted video recordings, which we have indicated, contains a discernable Texas license plate number. You represent that the sheriff does not have the technical capability to redact the information subject to section 552.130 in the

²As our ruling is dispositive for this information, we do not address your claim under section 552.130.

indicated video recording. Accordingly, the sheriff must withhold the indicated video in its entirety pursuant to section 552.130 of the Government Code. However, upon review of the remaining video recordings at issue, we find that no Texas license plate numbers are visible. Thus, the sheriff may not withhold the remaining video recordings under section 552.130 of the Government Code.

In summary, the sheriff must release the marked CRB-3 accident report to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. The marked medical records may only be released in accordance with the MPA. With the exception of basic information, the sheriff may withhold the information we have marked under section 552.108(a)(2) of the Government Code. The sheriff must withhold the indicated video in its entirety pursuant to section 552.130 of the Government Code. 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 367105

Enc. Submitted documents

c: Requestor
(w/o enclosures)