



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2010

Mr. Paul F. Wieneskie  
Attorney at Law  
For City of Euless Police Department  
204 South Mesquite  
Arlington, Texas 76010

OR2010-01961

Dear Mr. Wieneskie:

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# 370030.

The Euless Police Department (the "department"), which you represent, received a request for specified police reports pertaining to the requestor and his wife. You state some of the requested information will be released.<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You state that report number 0900019674 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-08617 (2009). In that ruling, we concluded that the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, the e-mail address we marked under section 552.137 of the Government Code, and release the remaining information. As we have no indication that the law, facts, and

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<sup>1</sup>You state, and we agree, the requestor generally has a right of access to report number 0900032373, which you state you will release pursuant to section 552.023 of the Government Code. Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

circumstances on which the prior ruling was based have changed, the department must rely on Open Records Letter No. 2009-08617 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note the requestor has specifically excluded social security numbers, driver's license numbers, state identification numbers, vehicle identification numbers, and personal financial identification numbers from the 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.

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). You state the department received the present request for information on November 12, 2009. However, your request for a ruling from this office is postmarked December 1, 2009. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with the requirements of section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your arguments under this exception.

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 section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You state the reports in Exhibits B-4 and B-5 were used or developed in an investigation of alleged child abandonment. *See id.* § 261.001(1) (defining “abuse” and “neglect” for the purposes of chapter 261 of the Family Code). You also state that this matter was referred to the Child Protective Services Division of the Texas Department of Family and Protective Services. We note that the requestor is a parent of the child victims listed in the information. However, the requestor is alleged to have committed the suspected abuse or neglect. Therefore, Exhibits B-4 and B-5 fall within the scope of section 261.201(a), and the requestor does not have a right of access under section 261.201(k). You do not indicate that the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that Exhibits B-4 and B-5 are confidential pursuant to section 261.201 of the Family Code, and the department must withhold these reports under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the report marked as Exhibit B-2 reveals that the requestor knows the identity of the individual involved as well as the nature of the incident in this report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the private information relates, the department must withhold Exhibit B-2 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Although you also seek to withhold Exhibits B-1 and B-3 in their entirety, you have not demonstrated, nor does it otherwise appear, this is a situation where these reports must be withheld in their entirety on the basis of common-law privacy. However, we agree that portions of the information in these reports are highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold the information we have marked in Exhibits B-1 and B-3 under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of Exhibit B-1 consist of medical records. Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part:

(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 that, when a file is created as the result of a hospital stay, all 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 may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the portion of Exhibit B-1 that constitutes medical records that may only be released in accordance with the MPA.

We note that the remaining information in Exhibits B-1 and B-3 includes a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state.<sup>2</sup> *See* Gov't Code § 552.130(a)(1)-(2). The department must withhold this information, which we have marked, under section 552.130.<sup>3</sup>

In summary, the department must continue to rely on Open Records Letter No. 2009-08617 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold Exhibits B-4 and B-5 under section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold Exhibit B-2 in its entirety and the information we marked in Exhibits B-1 and B-3 under section 552.101 in conjunction with common-law privacy. The medical records we have marked in Exhibit B-1 may only be released in accordance with the MPA. The department must withhold the information we marked in Exhibits B-1 and B-3 under section 552.130 of the Government Code. The remaining information must be released to the requestor.<sup>4</sup>

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

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<sup>2</sup>The 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).

<sup>3</sup>We note that the requestor has a special right of access to his own Texas driver's license number. *See* Gov't Code § 552.023. We further note that 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 a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney-general decision.

<sup>4</sup>We note that this requestor has a special right of access to some of the information being released that would otherwise be confidential with regard to the general public. *See* Gov't Code § 552.023(a). Therefore, if the department receives another request for this information from a person who does not have a special right of access to this information, the department should resubmit this same information and request another decision from this office. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 370030

Enc. Submitted documents

c: Requestor  
(w/o enclosures)