



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 2, 2010

Ms. Meredith Ladd  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-07978

Dear Ms. Ladd:

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# 381304.

The City of Krugerville (the "city"), which you represent, received a request for the complete investigation file concerning the termination of the requestor's client, all documents pertaining to the requestor's client's probation period, a complete copy of the requestor's client's personnel file, all documents reflecting the level of discipline received by employees of the Krugerville Police Department for the past five years for failure to meet probation, and the personnel file of the chief of police, as well as any additional documents concerning the performance and conduct of the chief of police. You state you will release some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. Gov't Code § 552.304 (interested party may submit comments stating why information should or should not 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 the Medical Practices Act (the "MPA"). Occ. Code §§ 151.001-165.160. 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(b)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). This office has concluded that 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 Nos. 487 (1987), 370 (1983), 343 (1982).

Medical records must be released upon the patient'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 find that the information we have marked is confidential under the MPA. Thus, the medical record we have marked may only be released in accordance with the MPA. *See* ORD 598.

The remaining information contains F-5 forms ("Report of Separation of Licensee") submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under chapter J of chapter 1701 of the Occupations Code. This form is confidential under section 1701.454 of the Occupations Code, which is also encompassed by section 552.101, and 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.

Occ. Code § 1701.454. In this instance, it does not appear that the named officer resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We, therefore, conclude that the city must withhold the submitted

F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). In addition, this office has found certain kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that 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. Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with the common-law right of privacy.

Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 of the Government Code.<sup>1</sup> Gov't Code § 552.117(a)(2).

---

<sup>1</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Thus, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

We note section 552.1175 of the Government Code may be applicable to portions of the remaining information.<sup>2</sup> Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(a), (b). The remaining information contains the home addresses and home telephone numbers of police officers not employed by the city. You do not inform this office, nor does any of the submitted information indicate, whether the officers at issue have elected to keep this information confidential in accordance with subsections 552.1175(b)(1) and (2). Accordingly, if the officers elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we have marked under section 552.1175. If no elections are made, the city may not withhold the marked information under section 552.1175 of the Government Code, and it must be released to the requestor.

Section 552.130 of the Government Code exempts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license, permit, title, or registration. *Id.* § 552.130(a)(1), (2). Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

---

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.136 of the Government Code states that “[n]otwithstanding 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; *see id.* § 552.136(a) (defining “access device”). Accordingly, you must withhold the insurance policy number and credit card number we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). You do not inform us the owners of the e-mail addresses we have marked have consented to the release of their information. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless an owner of an e-mail address has affirmatively consented to its release.

In summary, the city may only release the medical record we have marked in accordance with the MPA. The city must withhold the F-5 forms we have marked under section 552.101 of the Government Code in conjunction with 1701.454 of the Occupations Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the personal information we have marked under section 552.1175 of the Government Code, if the officers whose information is at issue elect to restrict access to this information in accordance with section 552.1175(b). The city must also withhold the information we have marked under sections 552.117, 552.130, 552.136, and 552.137 of the Government Code.<sup>3</sup> The remaining information must be released.<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 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,

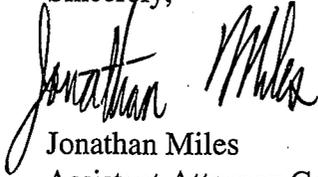
---

<sup>3</sup>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 Texas driver’s license numbers, a copy of a Texas driver’s license, and Texas license plate numbers under section 552.130 of the Government Code, insurance policy and credit card numbers under section 552.136 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>We note that because the requestor has a special right of access to portions of the information being released, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.

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,

A handwritten signature in cursive script, appearing to read "Jonathan Miles".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jb

Ref: ID# 381304

Enc. Submitted documents

c: Requestor  
(w/o enclosures)