



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2010

Ms. Jaime S. French
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300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792

OR2010-08816

Dear Ms. French:

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#382826.

The Schertz Police Department (the "department"), which you represent, received a request for the police report and statements of drivers involved in a specified automobile accident. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted medical records appear to have been obtained pursuant to a grand jury subpoena. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *Id.* at 3. Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, to the extent the submitted medical records are in the custody of the department as an agent of the grand jury, they are not subject to disclosure under the Act. *Id.* at 4. However, to the extent the submitted medical records are not in the custody of the department as an agent of the grand jury, they are subject to disclosure under

the Act. In that event, we address your arguments for this information, as well as for the remaining 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. Section 552.101 encompasses 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 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 Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also 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 upon the governmental body's receipt of 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. The medical records of a deceased patient may only be released on the signed written consent of the decedent's personal representative. *See id.* §§ 159.005(a)(5). Upon review, we agree that the information you have tabbed in orange constitutes medical records subject to the MPA. Thus, to the extent the medical records you have tabbed in orange are not in the custody of the department as an agent of the grand jury, the department may only release these records in accordance with the MPA.

We note the submitted information contains CR-3 accident reports that were 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) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065: Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) the date of the

accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See 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 of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the department with the date of the accident and the names of the drivers involved in the accident. Accordingly, the requestor in this instance has a statutory right of access to the submitted accident reports pursuant to section 550.065(c)(4). You claim portions of these accident reports are excepted from disclosure pursuant to section 552.130 of the Government Code. However, a statutory right of access generally prevails over the Act's exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the department must release the submitted CR-3 accident reports in their entirety to the requestor under section 550.065(c) of the Transportation Code.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or 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. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. We note that the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find that none of the information at issue consists of CHRI subject to chapter 411, and no portion of it may be withheld under section 552.101 on that basis.

Section 552.101 additionally 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.¹ *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. This office has found personal financial

¹The 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).

information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). The submitted information contains lien information that constitutes personal financial information. We find there to be no legitimate public interest in this information. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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(a). We note that this exception does not encompass out-of-state driver’s license or motor vehicle information. We also note that because section 552.130 protects privacy, which is a personal right that lapses at death, this exception is not applicable to a deceased individual’s driver’s license information. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Upon review, we note the department has marked both out-of-state motor vehicle record information and Texas motor vehicle information pertaining to a deceased individual. The department must only withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.²

In addition, we note that the requestor is an agent for the insurer of one of the individuals whose privacy interests is implicated by the instant request. As such, the requestor may have a right of access to the insured person’s Texas motor vehicle record information as the insured’s authorized representative. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, if the requestor is acting as the authorized representative of the insured, he has a right of access to his insured’s Texas motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). If the requestor is not acting as the individual’s authorized representative, the department must withhold the insured’s Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification

²Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers and Texas license plate numbers, without the necessity of requesting an attorney general decision. *See* ORD 684.

number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). You have not explained, and we cannot discern, how the claim numbers you have marked in the remaining information are access device numbers for purposes of section 552.136. Therefore, the department may not withhold the claim numbers under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.³ Gov’t Code § 552.147(a). Upon review, we agree that the social security numbers you have marked may be withheld under section 552.147.

We note that a portion of the submitted information is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Thus, any copyrighted information may only be released in accordance with copyright law.

In summary, to the extent the submitted medical records are held by the department as an agent of the grand jury, they are records of the judiciary not subject to disclosure under the Act. To the extent the submitted medical records are not held by the department as an agent of the grand jury, the department must withhold the submitted medical records you have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must release the submitted CR-3 reports pursuant to section 550.065(c) of the Transportation Code. The department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is acting as his insured’s authorized representative, the requestor has a right of access to his insured’s Texas motor vehicle record information pursuant to section 552.023. To the extent the requestor is not acting as his insured’s authorized representative, the department must withhold the insured’s Texas motor vehicle record information, as well as the remaining Texas motor vehicle information we have marked under section 552.130 of the Government Code. The department may withhold the social security numbers you have marked pursuant to section 552.147 of the Government

³We note that section 552.147(b) 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.

Code. The remaining information must be released. However, in releasing this information, the department must do so in accordance with copyright law.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#382826

Enc: Submitted documents

c: Requestor
(w/o enclosures)