



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2010

Ms. M. Ann Montgomery
Assistant Ellis County & District Attorney
Ellis County
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2010-10105

Dear Ms. Montgomery:

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# 385823.

The Ellis County Sheriff's Office (the "sheriff") received a request for all reports pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007 provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹Although you raise section 552.103 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. See Gov't Code §§ 552.301, 552.302.

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). You contend that the submitted information consists of juvenile records. Upon review of the submitted information, we agree that the submitted information involves a juvenile accused of delinquent conduct, so as to fall within the scope of section 58.007(c). *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of the Family Code); *see also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). We note, however, that the requestor is the parent of the juvenile offender listed in the report at issue. Under section 58.007(e), the requestor may inspect or copy law enforcement records concerning her child. *Id.* § 58.007(e). However, section 58.007(j)(2) of the Family Code

provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Therefore, we will consider your remaining arguments against disclosure.

Section 552.101 of the Government Code 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 part the following:

(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(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). Upon review, we find the information we have marked consists of medical records that are subject to the MPA. However, the remaining information you have indicated does not consist of medical records that are subject to the MPA. Accordingly, the medical records we have marked may only be released in accordance with the MPA.

Next, the sheriff asserts that portions of the remaining information are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based on this representation, we conclude that section 552.108(a)(1) is applicable to the information you have marked. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court

delineates law enforcement interests that are present in active cases). Therefore, the sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.²

Finally, section 552.147(b) of the Government Code 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. *Id.* § 552.147(b). However, this exception protects personal privacy; therefore, the requestor has a right of access to her child's and her own social security number. *See id.* § 552.023. Accordingly, the sheriff may withhold only social security numbers that belong to living persons other than the requestor or the requestor's child under section 552.147(b) of the Government Code.

In summary, the medical records we have marked may only be released in accordance with the MPA. The sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The sheriff must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The sheriff may withhold only social security numbers that belong to living persons other than the requestor or the requestor's child under section 552.147(b) of the Government Code. The remaining information must be released.³

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_ori.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

²We 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 under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³Because the requestor has a right of access to certain information being released that otherwise would be excepted from release under the Act, the sheriff must again seek a decision from this office if it receives a request for this 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 black ink, appearing to read 'Nneka Kanu', written in a cursive style.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 385823

Enc. Submitted documents

cc: Requestor
(w/o enclosures)