



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2010

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-11896

Dear Mr. Weir:

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# 389264 (COSA File No. 2010-5814).

The San Antonio Police Department (the "department") received a request for all information pertaining to department case numbers 00142503 and 06-675854. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you submitted a video recording that does not pertain to case number 00142503 or case number 06-675854. Because the requestor only seeks information pertaining to case numbers 00142503 and 06-675854, this video recording is not responsive to the request for information. This decision does not address the public availability of the non-responsive information, and the video recording we marked need not be released.

Section 552.108 of the Government Code provides in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) 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). We note section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Section 552.108(a)(1) generally protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims section 552.108(a)(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 Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A). With respect to case number 06-675854, you represent that the case is still open and that release of the submitted information pertaining to that case would jeopardize the investigation and prosecution of the case. However, you also state case number 06-675854 did not result in conviction or deferred adjudication. Because you have provided this office with conflicting representations with respect to this case, we find you have not demonstrated the applicability of section 552.108 to the submitted information that pertains to case number 06-675854, and such information may not be withheld under section 552.108 of the Government Code. Although the department raises section 552.108(a)(1) for the information pertaining to case number 00142503, you informed this office on August 4, 2010, that this case was closed on the date the department received the request. You also stated release of the submitted information pertaining to case number 00142503 would not interfere with any criminal investigation or prosecution. We therefore find section 552.108 is inapplicable to this information.

The submitted information contains information subject to section 552.101 of the Government Code.¹ 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. The submitted CR-3 accident report was 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.*

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

§ 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 not provided two of the pieces of information required by section 550.065(c)(4). Consequently, the submitted CR-3 accident report must be withheld from this requestor in its entirety under section 552.101 of the Government Code in conjunction with section 552.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (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 the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the department must withhold the CHRI we have marked in the remaining information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

The submitted information also includes medical records made confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See Occ. Code* § 151.001. Section 552.101 encompasses section 159.002 of the MPA, which 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(a)-(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). In addition, because hospital treatment is routinely conducted under the supervision of physicians, documents relating to diagnosis and treatment during a hospital stay also constitute protected medical records. *See* Open Decision Nos. 598 (1991), 546 (1990). Information taken directly from medical records and contained in other documents can be withheld in accordance with the MPA. *See* Occ. Code §§ 159.002, .004; ORD 598. We marked the information that relates to diagnosis and treatment during a hospital stay. These marked medical records must be withheld under section 552.101 in conjunction with the MPA.

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 satisfied. *Id.* at 681-82.

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). We have marked the compilations of criminal history that are not of legitimate concern to the public. However, information relating to routine traffic violations is not private and may not be withheld under section 552.101 on that basis. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision Nos. 600 at 9-10 (1992), 523 at 3-4 (1989). We have marked the vehicle lien information the release of which is not of

legitimate public interest in this instance. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate and embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the portions of the remaining submitted information that reveal personal medical information that we find is of no legitimate public interest. Accordingly, the department must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Some of the remaining information may also be protected by section 552.1175 of the Government Code. Section 552.1175 applies to commissioned security officers as defined by section 1702.002 of the Occupations Code, and provides in pertinent part:

(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(b). The remaining information contains the home address, home telephone number, social security number, and family member information of a security guard who, the submitted information reflects, is a commissioned security officer for purposes of section 1702.002. *See* Occ. Code § 1701.002(5) (defining "commissioned security officer" as a security officer to whom a security officer commission has been issued by the Texas Private Security Board). Thus, if this security officer elects to restrict access to the personal information we have marked in the submitted reports, as well as the information we indicated on the submitted video recording, the department must withhold this marked information under section 552.1175 of the Government Code. If this individual does not elect to restrict access to his information, the information we marked may not be withheld on that basis.

The remaining information also includes Texas motor vehicle record information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or personal identification document issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a). Therefore, the department must withhold the Texas motor vehicle record information we have marked in the submitted reports, as well as the information we

have indicated on the submitted photographs, 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.” *Id.* § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold the insurance policy and group numbers we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the submitted CR-3 accident report pursuant to section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. The department must also withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code, common-law privacy, and the MPA. The department must withhold the information we marked under section 552.1175 of the Government Code if the security officer whose information we marked elects to keep the marked information confidential. The department must withhold the information we marked under section 552.130 of the Government Code and the information we marked under section 552.136 of the Government Code.² The remaining responsive 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_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

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 and license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

³The remaining information contains social security numbers. 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. Gov’t Code § 552.147(b). Thus, the social security numbers in the remaining information, including the security officer’s social security number regardless of whether he complies with section 552.1175 of the Government Code, may be withheld under section 552.147 of the Government Code.

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 "Bob Davis", written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 389264

Enc. Submitted documents

cc: Requestor
(w/o enclosures)