



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-13219

Dear Mr. Griffith:

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# 392189.

The McKinney Police Department (the "department"), which you represent, received a request for: (1) a specified internal investigation file; (2) documents pertaining to discipline of department employees for violations of a specified rule during a specified time period; and (3) the requestor's client's personnel file. You state that the department has released some of the requested information. You further state that the department will redact certain information pursuant to the previous determination issued by this office in Open Records Decision No. 670 (2001).¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the 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

¹See Open Records Decision No. 670 at 6 (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting attorney general decision under section 552.117(a)(2); see also Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

Code § 552.101. This section encompasses information protected by other statutes, such as section 411.083 of the Government Code. Section 411.083 pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies 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. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information in accordance with chapter 411, subchapter F of the Government Code.² *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 only release CHRI to another criminal justice agency for a criminal justice purpose. *See 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. Furthermore, 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. Upon review, we conclude the department must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 and federal law. However, we find no portion of the remaining information constitutes CHRI, and none of it may be withheld under section 552.101 in conjunction with chapter 411.

We note the remaining information contains an L-2 Declaration of Medical Condition form and an L-3 Declaration of Psychological and Emotional Health form required by the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

²Although you assert release of the submitted information is prohibited by section 411.085 of the Government Code, that provision merely provides the penalties for the “Unauthorized Obtaining, Use, or Disclosure of Criminal History Record Information.” Gov’t Code § 411.085. Section 411.083 is applicable to the dissemination of CHRI.

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Upon review, we find the department must withhold the L-2 and L-3 declaration forms we have marked under section 552.101 in conjunction with section 1701.306.

We note the remaining information contains information acquired from a polygraph examination. Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Id. § 1703.306. We have marked information acquired from a polygraph examination that is generally confidential under section 552.101 in conjunction with section 1703.306. We note that the department has the discretion to release the marked information to the polygraph examinee or his authorized representative pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to section 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees).

Section 552.101 also encompasses section 611.002(a) of the Health and Safety Code, which provides “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These

sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Health & Safety Code §§ 611.004, .0045. Upon review, we find the information we have marked is generally confidential under section 611.002 of the Health and Safety Code. However, as the authorized representative of the person whose mental health record is at issue, the requestor may have a right of access to this information. *See id.* Accordingly, the department may only release the submitted mental health record in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

The Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, is also encompassed by section 552.101 of the Government 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(a)-(c). This office has concluded 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). You contend the submitted documents contain medical records subject to the MPA. However, upon review, we find the none of the remaining information constitutes medical records for purposes of the MPA. Therefore, the department may not withhold any of the remaining information under section 552.101 on that basis.

You state you will withhold the personal information of the officer concerned under section 552.117(a)(2) of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 670. As stated previously, Open Records Decision No. 670 authorizes the withholding of home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family information of peace officers, without the necessity of requesting an attorney general decision. However, we note that section 552.117 protects personal privacy.

In this instance, the requestor is the authorized representative of the officer whose personal information is at issue. Therefore, the requestor has a right of access to his client's private information under section 552.023 of the Government Code.³ *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or his authorized representative requests information concerning the individual). Accordingly, the department may not withhold any information under section 552.117.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state, a motor vehicle title or registration issued by an agency of this state, or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See Gov't Code* § 552.130(a)(1)-(3). This exception protects personal privacy. Therefore, because the requestor has a right of access under section 552.023 of the Government Code to his client's private information, none of the information at issue may be withheld under section 552.130. *See id.* § 552.023.

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. *Id.* § 552.147(a). Because the requestor also has a right to his client's social security number, none of the information at issue may be withheld under section 552.147. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

In summary, (1) the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law; (2) the department must withhold the L-2 and L-3 declaration forms we marked under section 552.101 in conjunction with section 1701.306 of the Occupations Code; (3) the department may withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code; and (4) the department may only release the submitted mental health record in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The remaining information must be released to the requestor.⁴

³Section 552.023 provides in part 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).

⁴We note that the information being released contains confidential information to which the requestor has a right of access. *See Gov't Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 392189

Enc. Submitted documents

c: Requestor
(w/o enclosures)