



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-16408

Dear Ms. Sangsvang:

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# 398377 (PIR No. W002929).

The City of Fort Worth (the "city") received a request for the investigative file, including certain types of information, pertaining to the requestor's client and a specified incident. You state the city has provided some of the requested information to the requestor, including a copy of the Texas Peace Officer's Crash Report Form CR-3. *See* Transp. Code § 550.065(c)(4) (providing governmental body must release accident report to person who provides two of following three items of information: (1) date of accident; (2) name of any person involved in accident; and (3) specific location of accident). You claim the submitted investigation records are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains search warrant and guardianship documents that have been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under other law. Although you claim the court-filed documents are confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy, we note information that may otherwise be confidential under common-law privacy may not be withheld on that basis if it is contained in a court-filed document. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (sexual assault victim's privacy right not violated by release of information in public court document). Consequently, none of the court-filed documents may be withheld on the basis of common-law privacy. You also claim the court-filed documents are excepted from

disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not withhold the search warrant documents submitted as pages 27, 28, and 31 or the guardianship documents submitted as pages 442 through 445 under section 552.108 of the Government Code. As you have not claimed any other exceptions to disclosure for the search warrant documents, they must be released. We note, however, portions of the guardianship documents are excepted under section 552.130 of the Government Code. Because section 552.130 is "other law" for purposes of section 552.022(a)(17), we will consider the applicability of this exception to the guardianship documents.

The guardianship documents contain a partial Texas driver's license number and a Texas vehicle identification number. Section 552.130 of the Government Code provides 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). Therefore, the city must withhold the partial driver's license number on page 442 and the vehicle identification number on page 443 under section 552.130 of the Government Code.¹ The remaining information in the guardianship documents must be released.

You claim the remaining information is protected by common-law privacy. 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. This section encompasses the doctrine of common-law privacy, which protects information if it (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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You state the remaining information should be withheld in its entirety under common-law privacy because the information constitutes compiled criminal history

¹We note this office 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.

information regarding the individual named in the request. The request, however, is for information pertaining to only the incident specified in the request. Therefore, we find the requestor is not asking the city to compile the named individual's criminal history, and none of the remaining information may be withheld under common-law privacy on that basis.

You claim the remaining information is excepted from disclosure under section 552.108 of the Government Code. This exception generally protects information that, if released, would interfere with the detection, investigation, or prosecution of crime, but does not make information confidential. *See* Gov't Code § 552.108(a)(1). The remaining information, however, includes the requestor's client's records that are subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, section 611.002 of the Health and Safety Code, and section 773.091 of the Health and Safety Code, all of which contain right of access provisions. *See* Occ. Code § 159.005(a)(1); Health & Safety Code §§ 611.004, .005, 773.092(e)(4), .093. This office has found specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986). Accordingly, we will address the records at issue under the MPA, section 611.002, and section 773.091.

Section 552.101 of the Government Code also encompasses the MPA, which pertains to medical records. *See* Occ. Code §§ 151.001. 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(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). This office has also determined when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). 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 the requestor's client's hospital treatment records submitted as pages 92 through 392 and page 401 constitute medical records. The requestor has provided an authorization to disclosure of health information signed by his client. If the city determines the requestor has provided proper consent in accordance with the MPA, the medical records at issue must be released. If the city determines the requestor has not provided proper consent, the medical records at issue must be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses section 611.002(a), which pertains to mental health records and 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). Sections 611.004 and 611.0045 provide for access to mental health records by only certain individuals. *See* ORD 565. 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. We find the psychological evaluation documents submitted as pages 393 through 400 constitute mental health records that are confidential under section 611.002 of the Health and Safety Code. As previously noted, however, the requestor may be authorized to obtain these mental health records. *See id.* §§ 611.004, .0045. Therefore, if the city determines the requestor is authorized to obtain the mental health records at issue in accordance with sections 611.004 and 611.0045 of the Health and Safety Code, the city must release these records. If the city determines the requestor is not so authorized, the mental health records at issue must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 also encompasses chapter 773 of the Health and Safety Code, which pertains to emergency medical service ("EMS") records. Section 773.091 provides in relevant part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). The requestor's client's EMS patient care records submitted as pages 55 through 60 constitute confidential EMS records. Records that are confidential under section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." *Id.* §§ 773.092(e)(4), .093. Section 773.093 provides a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. As previously noted, the requestor has provided a signed authorization to release health information. If the city determines the requestor has provided proper consent in accordance with sections 773.092 and 772.093, the EMS records submitted as pages 55 through 60 must be released in their entirety in accordance with chapter 773 of the Health and Safety Code. If the city determines the requestor has not provided proper consent, then with the exception of the information subject to section 773.091(g), which is not confidential, the EMS records at issue must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. We will consider your claim under section 552.108 of the Government Code for the remaining information, including the information subject to section 773.091(g).

Section 552.108(a)(1) of the Government Code 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[.]" Gov't Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to a pending criminal investigation. Based on your representations and our review, we determine release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the remaining information, including the information subject to section 773.091(g) of the Health and Safety Code, under section 552.108(a)(1) of the Government Code.

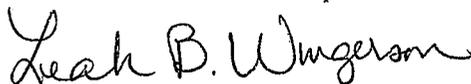
In summary, the city must withhold the partial driver's license number and vehicle identification number on pages 442 and 443 under section 552.130 of the Government Code. The remaining court-filed information on pages 27, 28, 31, and 442 through 445 must be released pursuant to section 552.022(a)(17) of the Government Code. If the city determines the requestor has provided proper consent in accordance with the MPA, the city must release

the medical records on pages 92 through 392 and page 401. Otherwise, the city must withhold the medical records under section 552.101 of the Government Code in conjunction with the MPA. If the city determines the requestor is authorized to obtain the mental health records on pages 393 through 400 in accordance with sections 611.004 and 611.0045 of the Health and Safety Code, the city must release this information. Otherwise, the city must withhold the mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. If the city receives proper consent, the city must release the EMS records on pages 55 through 60 in their entirety in accordance with chapter 773 of the Health and Safety Code. If the city does not receive proper consent, then with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the city must withhold the EMS records at issue under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 398377

Enc. Submitted documents

c: Requestor
(w/o enclosures)