



ATTORNEY GENERAL OF TEXAS
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Ms. Bonnie Lee Goldstein
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OR2010-16615

Dear Ms. Goldstein:

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# 398921.

The City of Princeton (the "city"), which you represent, received a request for information pertaining to a specified case number. You state the city will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you claim the information submitted as Exhibit 3 consists of records of the judiciary. The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a

¹Section 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).

governmental body.” Gov’t Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of “governmental body” under Act specifically excludes the judiciary). Information that is “collected, assembled, or maintained by or for the judiciary” is not subject to the Act. *Id.* § 552.0035(a); *see also* TEX. SUP. CT. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act.”). In this instance, you state Exhibit 3 is maintained by the city’s municipal court clerk on behalf of the judiciary. Accordingly, if this information is maintained solely by the court, we agree it is not subject to release under the Act, and need not be released in response to this request.² However, to the extent copies of the information at issue are also maintained by the city, they are subject to the Act and we will address your arguments for this information.

Next, we note Exhibits 2 and 3 are subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). In this instance, Exhibits 2 and 3 are part of a completed investigation conducted by the city’s police department. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation made by a governmental body is expressly public unless it is either excepted under 552.108 of the Government Code or is expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body’s interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records

²We note that records of the judiciary may be public under other sources of law. *See* Gov’t Code §§ 29.007(d)(4) (complaints filed with municipal court clerk), .007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov’t Code § 191.006 (records belonging to the office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

Decision No. 552 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022. Consequently, although you raise section 552.103 for Exhibit 2, it may not be withheld on that basis. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, and 552.130 of the Government Code, we will consider whether any of the submitted information is encompassed by those exceptions.

We note some of the submitted information in Exhibit 2 consists of medical records subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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 exception encompasses information other statutes make confidential, such as the MPA. *See* Occ. Code §§ 151.001-165.160. 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). 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. We have marked the medical records that are subject to the MPA. Thus, the marked medical records may only be released in accordance with the MPA.³

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by the Texas Department of Public Safety (the "DPS") concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides in part:

(a) The [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a)-(b). We have marked information in Exhibit 2 that is related to a concealed handgun license. The city appears to have obtained that information from the DPS. We note that the requestor is the license holder. Therefore, except for the requestor's name, date of birth, gender, race, and zip code, which must be released pursuant to section 411.192(b), the city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or 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. *See id.* at 683. 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.*

³As our ruling is dispositive of this information, we need not address your remaining arguments against its disclosure.

Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that records relating to routine traffic violations are not considered criminal history record information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we conclude the information at issue consists of driving record information. Therefore, the city may not withhold any of the information you seek to withhold on the basis of common-law privacy.

You raise section 552.108 of the Government Code for Exhibit 3. Section 552.108(a)(2) exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if 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[.]” *Id.* § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body claiming 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 id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit 3 relates to a citation that has been dismissed, and thus, has concluded in a result other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is generally applicable to Exhibit 3. We note, however, Exhibit 3 includes a citation, a copy of which was provided to the person who received the citation. Thus, the citation, which we have marked, may not be withheld under section 552.108 and must be released.

Additionally, section 552.108 does not exempt basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information described in *Houston Chronicle* does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. Thus, with the exception of basic information and the marked citation, the city may withhold Exhibit 3 under section 552.108(a)(2).⁴

⁴As our ruling is dispositive of this information, we need not address your remaining arguments against disclosure.

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. Gov't Code § 552.130. We note that section 552.130 protects personal privacy. Thus, the requestor has a right of access to his own Texas driver's license number under section 552.130 of the Government Code. *See id.* § 552.023 (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987). Furthermore, if the requestor is seeking the information on behalf of his spouse, then he also has a right of access to his spouse's Texas motor vehicle record information pursuant to section 552.023. If the requestor is not seeking the information as his spouse's authorized representative, then the city must withhold her Texas driver's license information, which we have marked, under section 552.130. In either event, the city must withhold the marked Texas driver's license information not belonging to the requestor or his spouse under section 552.130.⁵

In summary, to the extent the records submitted as Exhibit 3 are maintained solely by the city's municipal court, they are not subject to release under the Act and need not be released in response to the present request. The marked medical records in Exhibit 2 may only be released in accordance with the MPA. The city also must withhold the information we have marked in Exhibit 2 under section 552.101 in conjunction with section 411.192 of the Government Code, except for the information that must be released to the requestor under section 411.192(b). To the extent, the information in Exhibit 3 is also maintained by the city, with the exception of basic information and the marked citation, the city may withhold Exhibit 3 under section 552.108(a)(2) of the Government Code. If the requestor is not acting as the authorized representative of his spouse, her marked Texas driver's license information must be withheld under section 552.130 of the Government Code. In either event, the marked Texas driver's license information that does not belong to the requestor or his spouse must be withheld under section 552.130 of the Government Code. The remaining information must be released.⁶

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.

⁵We 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.

⁶We note the information being released includes the requestor's e-mail address that is generally confidential under section 552.137(a) of the Government Code, but to which this requestor has a right of access under section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b).

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 398921

Enc. Submitted documents

c: Requestor
(w/o enclosures)