



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2010

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2010-17532

Dear Ms. Lentz:

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# 400987.

The Williamson County Sheriff's Office (the "sheriff") received a request for a booking sheet, arrest report, officer statements, and medical reports pertaining to the arrest of a named individual in August, 2001. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excluded social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers from the request for information. Thus, any such information is not responsive to the request. This decision does not address the public availability of non-responsive information, and that information need not be released.

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<sup>1</sup>Although you also raise section 552.1175 of the Government Code with respect to the information at issue, we note section 552.117 is the proper exception for information the sheriff holds in its capacity as an employer.

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 made confidential by other statutes. You assert the information you marked constitutes a medical record, which is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides, in relevant part:

(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 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 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 may be released only on receipt of signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See id.* §§ 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). In this instance, the requestor may be the spouse of the individual whose medical record is at issue; thus, as the individual's spouse, the requestor may be acting as his authorized representative. Therefore, the sheriff must withhold the medical record you marked under section 552.101 in conjunction with the MPA, unless the sheriff receives written consent for release of that record that complies with the MPA.

Section 552.101 of the Government Code also encompasses the common-law right to 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. Determinations under common-law privacy must be made on a case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983); *Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case). 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* 540 S.W.2d at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Upon review, we find the information we marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff must generally withhold this information under section 552.101 in conjunction with common-law privacy. However, as previously noted, the requestor may be acting as the authorized representative of the individual to whom some of the marked information pertains. Accordingly, if the requestor is the authorized representative of this individual, then she has a right of access to the marked information pertaining to that individual pursuant to section 552.023 of the Government Code, and the sheriff must release this information to her. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). However, if the requestor is not the authorized representative of the individual at issue, then she does not have a right of access to the individual's private information pursuant to section 552.023, and the sheriff must withhold this information under section 552.101 in conjunction with common-law privacy. In either event, the sheriff must withhold the information we marked pertaining to the individual who is not the requestor's spouse under section 552.101 in conjunction with common-law privacy. We note none of the remaining information you marked is highly intimate or embarrassing. Thus, the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(2). An individual's personal post office box number is not a "home address" and, therefore, may not be withheld under section 552.117. *See id.* § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Upon review, we find the sheriff must withhold the information we marked under section 552.117(a)(2). The remaining information you seek to withhold does not consist of the home address, home telephone number, social security number, or family member information of a peace officer. Consequently, the sheriff may not withhold any of the remaining information under section 552.117(a)(2).

Lastly, you seek to withhold partial credit card numbers you marked under section 552.136 of the Government Code. Section 552.136 provides “[n]otwithstanding any other provision of this chapter, 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.” Gov’t Code § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). Thus, the partial credit card numbers you marked are generally confidential under section 552.136. We note, however, if the requestor is acting as the authorized representative of her spouse, to whom the credit cards belong, then she has a right of access to the credit card numbers marked pursuant to section 552.023 of the Government Code, and the sheriff must release this information to her. *See id.* § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor is not acting as her spouse’s authorized representative, the sheriff must withhold the partial credit card numbers you marked under section 552.136.<sup>2</sup>

In summary, the sheriff must withhold the medical record you marked under section 552.101 of the Government Code in conjunction with the MPA, unless the sheriff receives written consent for release of that record that complies with the MPA. The sheriff must withhold the information we marked pertaining to the individual who is not the requestor’s spouse under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must also withhold the information we marked pertaining to the requestor’s spouse under section 552.101 of the Government Code in conjunction with common-law privacy if the requestor is not acting as the authorized representative of her spouse. The sheriff must also withhold the information we marked under section 552.117(a)(2) of the Government Code. The sheriff must withhold the partial credit card numbers you marked under section 552.136 of the Government Code if the requestor’s is not acting as the authorized representative of her spouse. The remaining information must be released.

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](http://www.oag.state.tx.us/open/index_orl.php).

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<sup>2</sup>We 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 credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 400987

Enc. Submitted documents

c: Requestor  
(w/o enclosures)