



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2010

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2010-17983

Dear Ms. Middlebrooks:

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# 401527 (DPD PIR No. 2010-8386).

The Dallas Police Department (the "department") received a request for five categories of information pertaining to a named police officer. You claim portions of the requested information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

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. Section 552.101 encompasses information made confidential by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). 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). Medical records may only be released in accordance with the MPA. *See* ORD 598. Upon review of the submitted information, we find the department may only release the medical records we have marked in accordance with the MPA.

Section 552.101 also encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of Dallas to be part of an emergency communication district that was established under section 772.318. You have marked the telephone number of a 9-1-1 caller that you seek to withhold. To the extent that the marked information was furnished by a 9-1-1 service supplier, we agree that it must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

The submitted information includes an ST-3 accident report form that 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), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the entity with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with the information specified in section 550.065(c)(4). Therefore, the department must withhold the submitted ST-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

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 established. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision No. 545 (1990) (mortgage payments, assets, bills, and credit history). In addition, a compilation of an individual's criminal history record information 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). Therefore, the department must withhold the information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

You have marked portions of the remaining information under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Thus, the department must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code.

We note portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code.<sup>2</sup> Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle title or registration. *Id.* § 552.130(a)(2). The department must withhold the information we have marked under section 552.130 of the Government Code.<sup>3</sup>

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

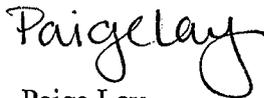
<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department may only disclose the medical records we have marked in accordance with the MPA. The department must withhold the following information under section 552.101 of the Government Code: (1) the information you have marked under section 772.318 of the Health and Safety Code if this information was provided by a 9-1-1 service supplier to the emergency communication district; (2) the submitted accident report under section 550.065 of the Transportation Code; and (3) the information marked under common-law privacy. The department must also withhold the information marked under sections 552.117 and 552.130 of the Government Code. The department must release the remaining information.

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), 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 401527

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)