



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2010-18802

Dear Ms. Rangel:

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# 402935.

The Fort Bend County Attorney's Office (the "county attorney") received a request for the employment records of the requestor's client. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also state, and provide documentation showing you have notified the Shreveport Police Department about the instant request for information. *See Gov't Code* § 552.304 (any person may submit written comments stating why information at issue in request for Attorney General ruling should or should not be released). We have considered the exception you claim and reviewed the submitted information.

First, you claim Exhibit C is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 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. *See 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. *See id.* at 681-82. The type 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. *Id.* at 683. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORDs 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). Exhibit C relates to an alleged sexual assault. In addition, the requestor's client knows the identity of the victim. Thus, the county attorney must withhold the submitted report in its entirety under section 552.101 in conjunction with common-law privacy.

Next, we note Exhibit D contains mental health records. Section 611.002 of the Health and Safety Code governs the public availability of mental health records and provides in part the following:

- (a) Communications 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.

- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). Exhibit D consists of mental health records that the county attorney must withhold under section 552.101 in conjunction with section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045 of the Health and Safety Code.

Next, you claim Exhibit E contains criminal history record information ("CHRI"). Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411,

subchapter F of the Government Code. *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 not release CHRI except to another criminal justice agency for a criminal justice purpose. *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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We agree Exhibit E contains CHRI that is confidential under section 411.083. Thus, the county attorney must withhold this information, which we have marked, under section 552.101 of the Government Code.¹ However, you have not demonstrated the remaining information in Exhibit E constitutes CHRI for purposes of section 411.083. Accordingly, no portion of the remaining information in Exhibit E may be withheld under section 552.101 on that basis.

The county attorney must withhold the Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. Exhibit D consists of mental health records that the county attorney must withhold under section 552.101 of the Government Code in conjunction with section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045 of the Health and Safety Code. The county attorney must also withhold the CHRI we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The remaining information in Exhibit E must be released.²

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

¹We note that a person can obtain his own CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

²We note that the information being released in this instance contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a) (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). If the county attorney receives another request for this same information from a different requestor, then the county attorney should again seek a decision from this office.

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,

A handwritten signature in black ink, appearing to read "Tamara Wilcox". The signature is fluid and cursive, with the first name being more prominent.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 402935

Enc. Submitted documents

c: Requestor
(w/o enclosures)