



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 6, 2011

Mr. David Daugherty  
Assistant County Attorney  
Harris County  
1310 Prairie, Suite 940  
Houston, Texas 77002

OR2011-06248

Dear Mr. Daugherty:

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# 416726 (C. A. File No. 11PIA0008).

The Harris County Tax Office (the "tax office") received a request for information pertaining to the registration of a specified handicap permit. We understand you will withhold the highlighted Texas driver's license number under section 552.130 of the Government Code in accordance with Open Records Decision No. 684 (2009).<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the tax office failed to comply with the procedural requirements of section 552.301 of the Government Code in seeking a ruling from this office. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is

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<sup>1</sup>This office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the tax office's claims under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your arguments under that exception.

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 information that other statutes make confidential, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part the following:

(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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* 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). We find the information we have marked constitutes confidential medical records that may only be released in accordance with the MPA.<sup>2</sup> However, we find none of the remaining information constitutes a medical record for purposes of the MPA. Accordingly, the tax office may not withhold any of the remaining information under section 552.101 on that basis.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 681.003 of the Transportation Code, which establishes the procedures by which an individual may obtain a disabled parking "placard." Section 681.003(d) specifically provides:

Information concerning the name or address of a person to whom a disabled parking placard is issued or in whose behalf a disabled parking placard is issued is confidential and not subject to disclosure under [the Act].

Transp. Code § 681.003(d). Section 681.003(d) specifically makes confidential only the name and address of a person who was issued a disabled parking placard. Therefore, the tax office must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 681.003(d) of the Transportation Code. However, the remaining information you have marked does not consist of the name and address of a person who was issued a disabled parking placard. Therefore, the tax office may not withhold any of the remaining information under section 552.101 on that basis.

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 satisfied. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). Upon review, we find the information at issue pertains to an individual who is not identified in the remaining information. Therefore, we find this information does not implicate any individual's privacy interest. Accordingly, this information may not be withheld under common-law privacy. Therefore, the tax office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Finally, section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release.<sup>3</sup> Gov't Code § 552.130(a)(1). The tax office must withhold the information we have marked under section 552.130.

In summary, the marked medical records may only be released in accordance with the MPA. The tax office must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 681.003(d) of the Transportation Code.

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos.* 481 (1987), 480 (1987), 470 (1987).

The tax office must withhold the information we have marked under section 552.130 of the Government Code. 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), 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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tf

Ref: ID# 416726

Enc. Submitted documents

c: Requestor  
(w/o enclosures)