



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2011

Ms. Meredith L. Kennedy
Assistant District Attorney
Office of the Wichita County Criminal District Attorney
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2011-07561

Dear Ms. Kennedy:

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# 417495.

The Office of the Wichita County Criminal District Attorney (the "district attorney") received a request for information relating to a specified investigation. You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the information in Tab 3 was obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are

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.

²We note that, although you raise section 552.113, section 552.111 of the Government Code is the proper exception to raise when asserting the work product privilege.

also not subject to the Act. Open Records Decision Nos. 513 (1988), 411 (1984), 398 (1983); *but see* ORD 513 at 4 (defining limits of judiciary exclusion). You state the information in Tab 3 is held by the district attorney as an agent of the grand jury. Accordingly, this information consists of records of the judiciary not subject to disclosure under the Act and the district attorney need not release this information.

Next, we must address the district attorney's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the district attorney received the request for information on February 23, 2011. While you raised sections 552.101, 552.111, and 552.137 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.108 until after the ten-business-day deadline had passed. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the district attorney failed to comply with the requirements mandated by subsection 552.301(b) as to its argument under section 552.108 of the Government Code.

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 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the district attorney has waived its argument under section 552.108, and may not withhold the submitted information on that basis. However, we will consider your timely raised arguments against disclosure under sections 552.101, 552.111, and 552.137 for the submitted information.

We note the submitted information contains CR-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the district attorney with at least two of the specified items of information. Accordingly, the district attorney must release the submitted CR-3 accident report forms found in Tab 7, which we have marked, and on pages twenty-two through twenty-three of the file entitled "WFPD Inv Attachments.pdf" on CD # 9 to this requestor in their entirety pursuant to section 550.065(c)(4) of the Transportation 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. Thus, section 552.101 encompasses information other statutes make confidential. For information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. You contend the information in Tab 2 and CD # 1 is protected under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. *See id.* § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." ORD 681 at 8; *see also* Gov't Code §§ 552.002, .003, .021. Therefore, we held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the district attorney may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 of the Government Code encompasses section 773.091 of the Health and Safety Code. Section 773.091 is applicable to information relating to the provision of emergency medical services ("EMS") and provides in pertinent part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(b)-(c). However, section 773.091 further provides:

The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(g). Upon review we find some of the information in Tab 2, which we have marked, constitutes EMS records maintained by an EMS provider documenting emergency medical service provided to a patient by EMS and, therefore, are generally confidential under section 773.091. *See id.* § 773.003(8) (defining "emergency medical services" for the purposes of chapter 773 of the Health and Safety Code). We note information made confidential by section 773.091 may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." *Id.* § 773.092(e)(4); *see also id.* § 773.093. Therefore, the EMS information we have marked is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g). However, the marked information must be released if the requestor provides the district attorney with the required consent for release of the information under sections 773.092 and 773.093. *See id.* §§ 773.092, .093; Open Records Decision No. 632 (1995). We find none of the remaining information in Tab 2 or on CD # 1 constitute EMS records, thus, the district attorney may not withhold any of the remaining information on this basis.

Section 552.101 of the Government Code also encompasses medical records made confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in pertinent 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). 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 determined that the protection afforded by section 159.002 extends to only 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 have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Upon review, we find the information we have marked in Tab 2 constitutes confidential medical records under the MPA and the district attorney must withhold this information under section 552.101 of the Government Code. However, we find none of the remaining information in Tab 2 or on CD # 1 constitutes medical records; thus, the district attorney may not withhold any of the remaining information on this basis.

You raise the work product privilege encompassed by section 552.111 of the Government Code for the information you have marked in Tab 1 and the information in Tab 4. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” *See* Gov’t Code § 552.111. This section encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

- (1) [M]aterial prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. *Id.*; ORD 677 at 6-8. In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that

a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

Nat'l Tank Co. v. Brotherton, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204; ORD 677 at 7.

You state the information you have marked in Tab 1 and the information in Tab 4 consists of work product and notes made by the prosecuting attorney made in preparation for a criminal trial pertaining to the incident at issue. Based on your representations and our review, we conclude the district attorney may withhold the information you have marked in Tab 1 and the information in Tab 4 as attorney work product under section 552.111 of the Government Code.

Section 552.101 of the Government Code also encompasses article 35.29 of the Code of Criminal Procedure. Information collected about jurors in the jury selection process is governed by article 35.29, which provides:

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought.

Crim. Proc. art. 35.29. Article 35.29 makes confidential certain personal information pertaining only to those individuals who actually served on the petit jury in a criminal trial. In addition to the confidential information listed in article 35.29, "other personal information" that is confidential pursuant to article 35.29 includes the juror's present employer, business telephone number, and spouse's employer. Juror names, however, are not made confidential by article 35.29, and are not "other personal information" that is

confidential pursuant to article 35.29. We also note that a post office box does not constitute a home address. *See id.* art. 35.29 (article 35.29 applies only to the home address of juror).

The remaining information in Tab 1 contains juror questionnaires, which you claim are confidential under article 35.29. You do not state that any of these individuals served on the jury. Thus, to the extent the information in the juror questionnaires consists of the home address, home telephone number, driver's license number, present employer, business telephone number, or spouse's employer of an individual who actually served on the petit jury, such information must be withheld under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure. If the individuals at issue did not serve on the petit jury, the information at issue is not confidential under article 35.29 and it may not be withheld under section 552.101 on that basis.

We note that one of the individuals whose information is at issue in Tab 1 is a police officer. Additionally, several of the individuals are employees of the Texas Department of Criminal Justice (the "TDCJ"). Accordingly, in the event article 35.29 of the Code of Criminal Procedure does not apply to these individuals, we address section 552.1175 of the Government Code for their information.³ Section 552.1175 applies to information pertaining certain individuals that the district attorney does not hold in an employment context and provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(3) current or former employees of the [TDCJ] or of the predecessor in function of the [TDCJ] or any division of the [TDCJ][.]

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

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

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (3), (b). Upon review, we determine the district attorney must withhold the information we have marked in Tab 1 for the police officer and TDCJ employees under section 552.1175 if the individuals to whom the information pertains elect to restrict access to their information in accordance with section 552.1175(b).

We note the information on CD # 3 consists of autopsy photographs. Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. We understand the photographs on CD # 3 are photographs of the decedent's body taken during an autopsy. We note that neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, based on our review, we find that the district attorney must withhold CD # 3 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

We note the information in Tab 7 includes a fingerprint. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Therefore, the district attorney must withhold the fingerprint we have marked in Tab 7 under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (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. The type of information considered intimate and 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. 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). Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). Upon review, we find that the information we have marked in Tabs 1 and 7, and in the printout of page one of the file entitled "WFPD Inv Attachments.pdf" on CD # 9 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district attorney must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). We note that the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004) (holding surviving family members have a right to personal privacy with respect to their close relative's death-scene images and such privacy interests outweigh public interest in disclosure).

Thus, because the information at issue pertains to a deceased individual, it may not be withheld from disclosure based on his privacy interests. However, the decedent's family has asserted a privacy interest in the information at issue. Upon review of the family's comments and the information at issue, we find the family's privacy interests in the information outweigh the public's interest in the disclosure of this information. We therefore conclude the district attorney must withhold the images we have marked on CD # 6 and CD # 7 under section 552.101 in conjunction with constitutional privacy and the holding in *Favish*.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the district attorney must withhold the information we have marked in Tab 7 and on the printouts of pages one through two, ten, twelve, fifteen, and twenty-five through twenty-six of the file entitled "WFPD Inv Attachments.pdf" on CD # 9 under section 552.130. The district attorney must also withhold the portion of the photographs and videos depicting a discernable Texas license plate number and registration sticker in CD #6, CD # 7, and CD # 8 under section 552.130 of the Government Code. Additionally, if article 35.29 of the Code of Criminal Procedure does not apply to the individuals whose information is at issue in Tab 1, the district attorney must withhold the information we have marked in Tab 1 under section 552.130.

Section 552.136 states, "Notwithstanding 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); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device for the purposes of section 552.136. Accordingly, the district attorney must withhold the information we have marked in Tab 7, as well as the information we have marked in the printout of the file entitled "Deas Receipts.pdf" on CD # 9 under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses at issue are not any of the types specifically excluded by section 552.137(c). You state the district attorney has not received consent to release any of the addresses at issue. Accordingly, the district attorney must withhold the e-mail addresses you have marked in Tab 5 and we have marked in Tab 7 under section 552.137 of the Government Code.

You note some of the information on CD # 1 and CD # 2 appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not

required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district attorney need not release the records the district attorney is keeping as an agent of the grand jury in Tab 3. The district attorney must release the CR-3 accident report forms found in Tab 7, which we have marked, and on pages twenty-two through twenty-three of the file entitled "WFPD Inv Attachments.pdf" on CD # 9 to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. Additionally, (1) with the exception of the information in section 773.091(g), the district attorney must withhold the EMS information we have marked in Tab 2 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code; (2) the district attorney must withhold the medical records we have marked in Tab 2 under section 552.101 of the Government Code in conjunction with the MPA; (3) the district attorney may withhold the information you have marked in Tab 1 and the information in Tab 4 as attorney work product under section 552.111 of the Government Code; (4) the district attorney must withhold the information in the juror questionnaires in Tab 1 under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure, to the extent the information in the juror questionnaires consists of the home address, home telephone number, driver's license number, present employer, business telephone number, or spouse's employer of an individual who actually served on the petit jury; (5) to the extent article 35.29 of the Code of Criminal Procedure does not apply, the district attorney must withhold the information we have marked in Tab 1 for the police officer and TDCJ employees under section 552.1175 of the Government Code if the individuals to whom the information pertains elect to restrict access to their information; (6) the district attorney must withhold the autopsy photographs on CD # 3 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure; (7) the district attorney must withhold the fingerprint we have marked in Tab 7 under section 552.101 in conjunction with section 560.003 of the Government Code; (8) the district attorney must withhold the information we have marked in Tabs 1 and 7, and in the printout of page one of the file entitled "WFPD Inv Attachments.pdf" on CD # 9 under section 552.101 of the Government Code in conjunction with common-law privacy; (9) the district attorney must withhold the images we have marked on CD #6 and CD #7 under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*; (10) the district attorney must withhold the information we have marked in Tab 7; the information we have marked on the printouts of pages one through two, ten, twelve, fifteen, and twenty-five through twenty-six of the file entitled "WFPD Inv Attachments.pdf" on CD # 9; the portion of the photographs and videos depicting a discernable Texas license plate number and registration sticker on CD # 6, CD # 7, and CD # 8; and the information we have marked in Tab 1, in the event article 35.29 of the Code of Criminal Procedure is not applicable to these individuals, under section 552.130 of the

Government Code; (10) the district attorney must withhold the information we have marked in Tab 7, as well as the information we have marked in the printout of the file entitled "Deas Receipts.pdf" on CD # 9 under section 552.136 of the Government Code; and (11) the district attorney must withhold the e-mail addresses you have marked in Tab 5 and we have marked in Tab 7 under section 552.137 of the Government Code.⁴ The district attorney must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 417495

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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: a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code; a Texas driver's license number, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number under section 552.130 of the Government Code; a credit card number, debit card number, charge card number, and insurance policy number under section 552.136 of the Government Code; and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.