



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2011

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2011-08012

Dear Ms. Camp-Lee:

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# 419583.

The Round Rock Police Department (the "department"), which you represent, received a request for employment and proficiency certification information pertaining to two named officers. You state the department has released some of the requested information. We note the department has redacted information pursuant to Open Records Decision No. 670 (2001), which is a previous determination by this office authorizing a governmental body to redact information subject to section 552.117(a)(2) of the Government Code.¹ We also note the department has redacted insurance policy numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).² You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

²This office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Code § 552.101. This section encompasses statutes that make information confidential, such as the laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas 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 obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the department must withhold the CHRI you have marked in orange under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 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 department must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. We find the remaining information on the documents you have marked in green does not constitute a biometric identifier; thus, the department may not withhold the remaining information you have marked in green on this basis.

We note the remaining information in the document you marked in green contains information subject to section 552.102 of the Government Code.³ Section 552.102(a) exempts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

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 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 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 agree the information you have marked in purple constitutes confidential medical records under the MPA and the department must withhold this information under section 552.101 of the Government Code.⁴

We note the remaining information includes information subject to section 611.002 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses Section 611.002, which governs the public availability of mental health records and provides:

(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.

⁴As our ruling is dispositive, we need not address your remaining argument for this information.

(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, .0045; Open Records Decision No. 565 (1990). We find the department must withhold the mental health record we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045.⁵

Section 1701.306 of the Occupations Code is also encompassed by section 552.101 of the Government Code. Section 1701.306 makes confidential L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). Section 1701.306 provides:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

- (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
- (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Upon review, we find the department must withhold the L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

You assert the photograph you have marked in red is excepted from disclosure under section 552.119, which provides the following:

⁵As our ruling is dispositive, we need not address your argument for this information.

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. You state release of this picture "could endanger the life or physical safety of the officer . . . if this officer were ever placed in undercover assignment[.]" You also argue release of this picture would be dangerous "if individuals with criminal intent were to obtain the photographs and use them to their advantage." Upon review, we find you have not explained how release of the officer's photograph would endanger the officer's life or physical safety at this time. Accordingly, we determine that the department has failed to demonstrate how the release of the officer's photograph would endanger the life or physical safety of this officer. Therefore, the photograph of the peace officer you have marked may not be withheld under section 552.119 of the Government Code.

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). We find the department must withhold the information you have marked in yellow under section 552.130 of the Government Code.

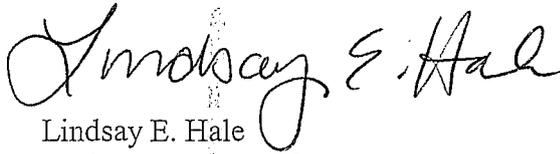
In summary: (1) the department must withhold the CHRI you have marked in orange under section 552.101 in conjunction with federal law and chapter 411 of the Government Code; (2) the department must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code; (3) the department must withhold the information we have marked under section 552.102 of the Government Code; (4) the department must withhold the medical records you have marked in purple under section 552.101 of the Government Code in conjunction with the MPA; (5) the department must withhold the mental health record we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code; (6) the department must withhold the L-2 and L-3 declaration forms under section 552.101 of

the Government Code in conjunction with section 1701.306 of the Occupations Code; and (7) the department must withhold the information you have marked in yellow under section 552.130 of the Government Code.⁶ 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, 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# 419583

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶We note the previous determination issued in Open Records Decision No. 684 authorizes all governmental bodies to withhold: a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code; L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.