



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2011

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

OR2011-12467

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# 428444 (DPD ORR 2011-05164).

The Dallas Police Department (the "department") received a request for internal affairs investigations involving a named officer. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

¹We 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). This office has also concluded that, when a file is created as the result of a hospital stay, all the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records may only be released in accordance with the MPA. *See* Open Records Decision No. 598 (1991). Upon review, we agree that the information you have marked constitutes medical records that may only be released in accordance with the MPA.

Section 552.101 also encompasses Chapter 772 of the Health and Safety Code, which 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 is part of an emergency communication district established under section 772.318. You seek to withhold the telephone number and address of a 9-1-1 caller. We conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code to the extent it is the originating telephone number and address furnished by a 9-1-1 service supplier. If the marked information is not the originating telephone number and address furnished by a 9-1-1 service supplier, the department may not withhold this information under section 552.101 in conjunction with section 772.318.

Section 552.101 also encompasses section 58.307 of the Family Code, which restricts access to “[i]nformation that is part of a local juvenile justice information system[.]” Fam. Code § 58.307. A “[l]ocal juvenile justice information system” is “a county or multicounty computerized database of information concerning children, with data entry and access by the partner agencies that are members of the system.” *See id.* § 58.301(4). The department

must withhold the information we have marked under section 58.307 of the Family Code in conjunction with section 552.101.²

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *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. *Id.* at 681-82. The types 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. Additionally, this office has determined that common-law privacy protects the identities of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007(c). This office has also found that a compilation of an individual's criminal history 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find a portion of the remaining information is highly intimate or embarrassing information that is not of legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must also withhold the marked information that identifies a juvenile offender under section 552.101 in conjunction with common-law privacy.³

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, §.4 (to be codified as an amendment to Gov't Code § 552.130(a)). The department must withhold the information you have marked under section 552.130 of the Government Code.

You also raise section 552.136 of the Government Code for the employee numbers you have marked. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled,

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. We understand that a police officer’s employee number is also used as the officer’s city credit union account number. Based upon this understanding, we agree the department must withhold the employee number you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the following information under section 552.101 of the Government Code: (1) the marked medical records in accordance with the MPA; (2) the information you have marked under section 772.318 of the Health and Safety Code to the extent it is the originating telephone number and address furnished by a 9-1-1 service supplier; (3) the information we have marked in conjunction with section 58.307 of the Family Code; and (4) the marked information in conjunction with common-law privacy. The department must withhold the information marked pursuant to sections 552.130 and 552.136 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, 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/bs

Ref: ID# 428444

Enc. Submitted documents

c: Requestor
(w/o enclosures)