



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

Ms. Jenny Gravley
For the Euless Police Department
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2011-17069

Dear Ms. Gravley:

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# 436492.

The City of Euless (the "city"), which you represent, received a request for police reports pertaining to criminal trespass charges during a specified time period and a named employee's certificate of training for the Act. We understand you will provide the requested certificate to the requestor for inspection. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion the city failed to comply with section 552.301 of the Government Code in requesting a ruling from this office. You and the requestor assert the city received the instant request for information on August 8, 2011. You state the city provided the requestor with a written itemized estimate of the charges for responding to the request and requested payment on August 19, 2011. *See id.* § 552.2615 (providing governmental body shall provide requestor with estimate of charges if charges exceed \$40). In response to the itemized statement, the requestor modified his request on August 29, 2011. Pursuant to the ruling in *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010), the

10-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed. Thus, because the requestor modified his request on August 29, 2011, we find the city is deemed to have received the request on August 29, 2011.¹ *See id.* § 552.301(b)-(c); *see also City of Dallas*, 304 S.W.3d at 387. We also note September 5, 2011 was a holiday. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the ten-business-day deadline for requesting a ruling from this office was September 13, 2011, and the fifteen-business-day deadline was September 20, 2011. After receiving the modified request, the city requested a ruling from this office in a letter bearing a postmark dated September 13, 2011 and submitted the information required by section 552.301(e) in a letter bearing a postmark dated September 19, 2011. *See Gov't Code* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the city complied with section 552.301 in requesting this decision, and we will address your argument under section 552.101 of the Government Code for the submitted information.

We also understand the requestor to assert the city's request for a ruling is invalid because it was made by an attorney, and the requestor has no record the city has made this attorney its agent for purposes of requesting rulings from this office under the Act. Section 552.301 of the Government Code provides, in relevant part, the following:

[a] governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

See id. § 552.301(a); *see also* 7 Tex. Jur. 3d Attorneys at Law § 143 (attorney presumed to have authority to act for client attorney professes to represent). We note section 552.301 does not require a governmental body to request a ruling from this office through an agent that has been specifically designated to request such a ruling. Accordingly, we find the city's request for a ruling complies with the requirements of section 552.301, and we address the city's arguments under section 552.101 of the Government Code for the submitted information.

¹Although you assert the city's request for a ruling is considered timely pursuant to section 552.263(e-1) of the Government Code, we note the 82nd Legislature added that section to apply only to a request for information that is received by a governmental body or an officer for public information on or after September 1, 2011. *See Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, §§ 38, 40, and 41* (to be codified as amendments to Gov't Code § 552.263). Thus, section 552.263(e-1) does not apply to the instant request for information and the law governing the timeliness of the instant request is the Texas Supreme Court's ruling in *City of Dallas*. *See* 304 S.W.3d at 387.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses information other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The reports you have marked involve juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). In his request for information, the requestor argues the city has no ground to withhold the reports you have marked from him because he already knows some information contained in those records. However, none of the exceptions in section 58.007 apply in this instance. Therefore, we find the reports you have marked are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See Occ. Code* §§ 151.001-165.160. Section 159.002 of the MPA provides, in 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.

Id. § 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 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 constitutes a confidential medical record. Accordingly, the city may only release the marked medical record in accordance with the MPA. *See* ORD 598.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. This office has found 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). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 on this basis.

You state the city will redact some motor vehicle record information pursuant to section 552.130 of the Government Code and Open Records Decision No. 684 (2009).² We note the submitted information contains additional motor vehicle and personal identification information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

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). Upon review, we find the city must withhold the information you have marked, and the information we have marked, under section 552.130.

In summary, the city must withhold the reports you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city may only release the marked medical record in accordance with the MPA. The city must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the marked information under section 552.130 of the Government Code. The remaining information must be released.³

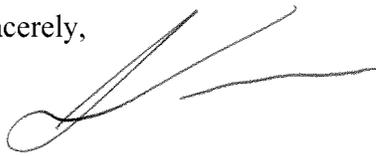
²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

³As you acknowledge, the remaining information contains social security numbers. Section 552.147 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. *See* Gov't Code § 552.147(b).

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 436492

Enc. Submitted documents

c: Requestor
(w/o enclosures)