



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2011

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-17748

Dear Ms. Evans:

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# 437536 (GC No. 18959).

The Houston Police Department (the "department") received a request for all police reports, pen packets, intake reports, photo arrays, and parole records relating to a named individual and a specified cause number. You claim that the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note some of the submitted information was created after the request was received. This information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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

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<sup>1</sup>We 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.

Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You assert the responsive information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). However, section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *Id.* § 261.201(h). The responsive information indicates the alleged offense occurred at a child-care facility that may be regulated under chapter 42. Because we are unable to determine whether the facility was regulated under chapter 42, we must rule conditionally. If the facility at which the alleged abuse occurred was not regulated by chapter 42 of the Human Resources Code, we conclude the responsive information is subject to section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code. However, if the facility at which the alleged abuse occurred was regulated by chapter 42 of the Human Resources Code, section 261.201(a) of the Family Code is not applicable to the information at issue, and the department may not withhold the responsive information under section 552.101 on that basis. In that instance, we address your remaining arguments.

Section 552.101 of the Government Code 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). You argue the responsive information should be withheld in its entirety under section 552.101 in conjunction with common-law privacy. The requested information pertains to an alleged sexual assault. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold all of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. In this instance, the requestor may represent the defendant and, therefore, would know the identity of the alleged victim. Accordingly, we rule conditionally. If the requestor represents the defendant, then the department must withhold the responsive information in its entirety under section 552.101 in conjunction with common-law privacy. However, if the requestor does not represent the defendant, the department may not withhold the responsive information in its entirety on that basis.

You also claim the responsive information is subject to the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which is also encompassed by section 552.101. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part the following:

(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). 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). 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 consists of medical records subject to the MPA. Accordingly, we conclude the information we have marked may only be released in accordance with the MPA. However, we find no portion of the remaining information at issue consists of medical records subject to the MPA. Accordingly, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) states “[c]ommunications 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.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We find a portion of the responsive information constitutes mental health records. Therefore, the mental health records, which we have marked, are confidential under section 552.101 in conjunction with section 611.002 and may only be released in accordance with sections 611.004 and 611.0045.

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 form and its attachment in response to this request for information would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, the I-9 form and its attachment, which we have marked, are excepted from disclosure under section 552.101 in conjunction with federal law and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as a taxpayer’s “identity, the nature, source, or amount of his income[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Consequently, the department must withhold the W-4 form we have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual

law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the department maintains, except that the department 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 the department or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that either identifies or tends to identify a victim of sexual assault or other sex-related offense. Common-law privacy also protects information pertaining to psychiatric treatment of mental disorders. *See Indus. Found.*, 540 S.W.2d at 683. We find that portions of the remaining information, which we have marked, are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit 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, as well as the additional information we have marked, under section 552.130.

You claim the social security numbers in the remaining information are excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the department may withhold the social security numbers in the remaining responsive information under section 552.147.<sup>2</sup>

In conclusion, if the facility at which the alleged abuse occurred was not regulated by chapter 42 of the Human Resources Code, we conclude the responsive information is subject to section 261.201(a) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, if the facility at which the alleged abuse

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<sup>2</sup>We note section 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.

occurred was regulated by chapter 42 of the Human Resources Code, section 261.201(a) of the Family Code is not applicable to the information at issue, and the department may not withhold the responsive information under section 552.101 on that basis. In that instance, if the requestor represents the defendant, then the department must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor does not represent the defendant, the department may not withhold the responsive information in its entirety on that basis. However, the department must withhold the information we have marked under: (1) the MPA; (2) section 611.002 of the Health and Safety Code, (3) section 1324a of title 8 of the United States Code; (4) section 6103(a) of title 26 of the United States Code; (5) section 411.083 of the Government Code and federal law, and (6) common-law privacy.<sup>3</sup> Furthermore, the department also (1) must withhold the information marked under section 552.130 of the Government Code; (2) may withhold the social security numbers in the remaining responsive information under section 552.147 of the Government Code; and (3) must release the remaining responsive 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](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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/ag

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<sup>3</sup>We 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 Form I-9 and attachments under section 552.101 in conjunction with section 1324a of title 8 of the United States Code and a W-4 form under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code without the necessity of requesting an attorney general decision.

Ref: ID# 437536

Enc. Submitted documents

c: Requestor  
(w/o enclosures)