



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2012

Mr. Joe Torres, III
Attorney at Law
For City of Alice
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2012-00274

Dear Mr. Torres:

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# 441570.

The Alice Police Department (the "department"), which you represent, received a request for all information related to two named individuals at a specified address, including incident report number 2011000281. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if (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 satisfied. *Id.* at 681-82. This office has found 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. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when

¹Although you generally raised section 552.108 of the Government Code, you did not provide any arguments regarding the applicability of this section. Therefore, we assume you have withdrawn this exception. See Gov't Code §§ 552.301, .302.

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.

The present request, in part, seeks all reports pertaining to the named individuals. This part of the request requires the department to compile the named individuals' criminal histories and, thus, implicates those individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, such information is confidential under section 552.101 in conjunction with common-law privacy as a compilation of criminal history.

We note you have submitted information, including the specified incident report, that does not depict the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the specified individuals, and it may not be withheld as a criminal history compilation under section 552.101 in conjunction with common-law privacy. However, we will consider whether this information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.²

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). Section 159.001 of the MPA defines “patient” as a person who consults with or is seen by a physician to receive medical care. *See* Occ. Code § 159.001(3). Medical records must be released upon the governmental body’s receipt of the patient’s signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. 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.

Section 552.101 of the Government Code also encompasses 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. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides, in pertinent part, 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child’s parent or guardian.

Id. § 58.007(c), (e). Upon review, we find incident report number 2011002313 involves juvenile delinquent conduct occurring after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c).

We note that the requestor is a representative of U.S. Immigration and Customs Enforcement (“ICE”). Section 58.007(e) gives a “criminal justice agency as . . . defined by Section 411.082, Government Code” a right of access to juvenile law enforcement records. Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” Gov’t Code § 411.082(3)(A). If the department determines ICE is a criminal justice agency as defined by section 411.082, then the requestor has a right of access to incident report number 2011002313 under section 58.007(e). However, if the department determines that ICE is not a criminal justice agency, then the department must withhold incident report number 2011002313 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note that a release of information made confidential by section 58.007(c) under the authority of section 58.007(e) would not constitute a disclosure of confidential information to the public for the purposes of section 552.352 of the Government Code or a selective disclosure of information to the public for the purposes of section 552.007. *See* Open Records Decision Nos. 680 at 7-8 (2003), 655 at 8-9 (1997); *compare* Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized, and receiving agency is not among statute’s enumerated entities).

Section 552.130 of the Government Code excepts from disclosure “information [that] 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; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]” Gov’t Code § 552.130(a)(1), (2). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. The marked medical records may only be released in accordance with the MPA. If the department determines ICE is a criminal justice agency as defined by section 411.082 of the Government Code, then the requestor has a right of access to incident report number 2011002313 under section 58.007(e). However, if the department determines that ICE is not a criminal justice agency, then the department must withhold incident report number 2011002313 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the

motor vehicle record information we have marked under section 552.130 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 441570

Enc. Submitted documents

c: Requestor
(w/o enclosures)