



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2012

Ms. Shannon C. Francis  
Assistant County Attorney  
Williamson County  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

OR2012-05552

Dear Ms. Francis:

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# 451047.

The Williamson County Attorney's Office (the "county attorney's office") received a request for information pertaining to two specified investigations, as well as other specified information pertaining to the requestor. You state the county attorney's office has released some of the requested information, but claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note case number C11-01-04925 consists of a completed investigation that is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Although you assert this information is excepted from disclosure under section 552.111 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111). Accordingly, the county attorney's office may not withhold this information under section 552.111. The attorney work product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" that make information expressly confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Those rules are only applicable, however, to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, rule 192.5 is not applicable to case number C11-01-04925, which pertains to a criminal investigation. Therefore, the county attorney's office may not withhold any of the information related to this case on the basis of Texas Rule of Civil Procedure 192.5. However, section 552.101 of the Government Code makes information confidential under chapter 552. In addition, information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code. Thus, we will consider the applicability of sections 552.101 and 552.108 to case number C11-01-04925.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided 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. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be

released only as provided under the MPA. Open Records Decision No. 598 (1991). The submitted information contains the medical records of the requestor. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, access to records created or maintained by a physician subject to the MPA is governed by the provisions of that statute, rather than by the Act. *Id.* Thus, the county attorney's office may only release the submitted medical records, which we have marked, in accordance with the MPA.

You assert the remaining information related to case number C11-01-04925 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state case number C11-01-04925 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information. You state you have released the basic information related to this case. *See Gov't Code § 552.108(c); Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the county attorney's office may withhold the remaining information related to case number C11-01-04925 under section 552.108(a)(2).<sup>1</sup>

You assert some of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. Section 552.101 encompasses 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. 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 of Public Safety ("DPS") maintains, except that the 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, but 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.

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<sup>1</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

*See generally id.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. The county attorney's office 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.<sup>2</sup> You have not established, however, that any of the remaining information is confidential under section 411.083, and the county attorney's office may not withhold it under section 552.101 on that ground.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). 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 you have not established any of the remaining information consists of criminal history record information. Therefore, this information is not confidential under common-law privacy, and the county attorney's office may not withhold it under section 552.101 on that ground.

The county attorney's office asserts some of the remaining information is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the county attorney's office must withhold the e-mail addresses you have marked in the remaining information under section 552.137.

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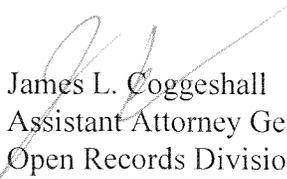
<sup>2</sup>We note the requestor can obtain her own CHRI from DPS. Gov't Code § 411.083(b)(3).

To conclude, the county attorney's office may only release the marked medical records in accordance with the MPA. The county attorney's office may withhold the remaining information related to case number C11-01-04925 under section 552.108(a)(2) of the Government Code. The county attorney's office 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 the information you have marked in the remaining documents under section 552.137 of the Government Code. The county attorney's office must release the remaining information.<sup>3</sup>

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 451047

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Because the requestor has a special right of access to some of the information being released, the county attorney's office must again seek a decision from this office if it receives another request for the same information from another requestor.