



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2012

Mr. John F. Healey, Jr.
District Attorney
Fort Bend County District Attorney's Office
301 Jackson
Richmond, Texas 77469-3108

OR2012-06083

Dear Mr. Healey:

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# 451807.

The Fort Bend County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a named individual and twelve specified cause numbers.¹ You state the district attorney's office has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This exception 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 the following:

¹We note the district attorney's office asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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 subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, 159.004; 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 marked the portions of the submitted information that constitute medical records. Accordingly, the medical records we have marked must be withheld under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information consists of medical records for purposes of the MPA, and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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; 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 DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). We have marked the CHRI the district attorney's office must withhold under section 552.101 in conjunction with chapter 411 and federal law. However, we find no portion of the remaining information consists of CHRI that is confidential under

section 411.083, and the district attorney's office may not withhold any of the remaining information under section 552.101 on that basis.

We note one of the submitted photographs contains fingerprints. Section 552.101 also encompasses section 560.003 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the fingerprint information in the photograph we have indicated. Therefore, the district attorney's office must withhold the fingerprints in the photograph we have indicated under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 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). 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 personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). This office has also 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 and the information we have indicated on one of the submitted audio recordings is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district attorney's office must withhold the information we have marked and indicated pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office has failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district attorney's office may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert release of Exhibit E would reveal the mental impressions or legal reasoning of prosecutors in the district attorney's office pertaining to specified criminal cases. Based on your representation and our review, we conclude the district attorney's office may withhold Exhibit E under section 552.108(a)(4) of the Government Code.²

We note some of the remaining information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). Upon review, we find the district attorney's office must withhold the family member information we have indicated in the submitted video recordings under section 552.1175 if the individuals to whom this information pertains are currently licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. However, the district attorney's office may not withhold the family member information we have indicated in the submitted video recordings under

²As our ruling is dispositive for this information, we do not address your remaining arguments against its disclosure.

³The 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).

section 552.1175 if the individuals are not currently licensed peace officers, or no elections are made.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit, or a motor vehicle title or registration, issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1), (2). Accordingly, the district attorney's office must withhold the information we have marked in the remaining documents and the information we indicated in the submitted video recordings and submitted photographs under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. Accordingly, we find the district attorney's office must withhold the debit card numbers we have marked under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. The district attorney's office may withhold the submitted social security numbers under section 552.147 of the Government Code.⁴

In summary, the medical records we have marked must be withheld under section 552.101 of the Government Code in conjunction with the MPA. The district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 and federal law. The district attorney's office must withhold the fingerprints in the photograph we have indicated under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district attorney's office must withhold the information we have marked and the information we have indicated in one of the submitted audio recordings pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office may withhold Exhibit E under section 552.108(a)(4) of the Government Code. The district attorney's office must withhold the family member information we have indicated in the submitted video recordings under section 552.1175 of the Government Code if the individuals to whom this information pertains are currently licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. The district attorney's office must withhold the information we have marked in the remaining documents and the information we indicated in the submitted video recordings and submitted photographs under section 552.130 of the Government Code. The district attorney's office must withhold the information we have marked under

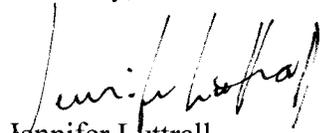
⁴We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

section 552.136 of the Government Code. The district attorney's office may withhold the submitted social security numbers under section 552.147 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 451807

Enc. Submitted documents

c: Requestor
(w/o enclosures)