



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2012

Mr. Jason M. Rammel
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664

OR2012-06384

Dear Mr. Rammel:

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# 452435.

The Hutto Police Department (the "department"), which you represent, received a request for information related to the requestor's clients and a specified address. You state some responsive information has been released. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. Section 552.101 of the Government Code also encompasses section 258.102 of the Occupations Code. Section 258.102 provides in pertinent part as follows:

(a) The following information is privileged and may not be disclosed except as provided by this subchapter:

- (1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and

(2) a dental record.

Occ. Code § 258.102(a). A “dental record” means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *See id.* § 258.101(1). A person who receives information that is privileged under section 258.102 may disclose that information to another person only to the extent disclosure is consistent with the purpose for which the information was obtained. *See id.* § 258.108. Dental 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) the person to whom the information is to be released, and (3) the purpose for the release. *Id.* § 258.104. We find the information we have marked in Exhibit C constitutes confidential dental records. Thus, the marked dental records must be withheld under section 258.102 of the Occupations Code, unless the department receives consent for release that complies with section 258.104.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides as follows:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

[and]

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The information submitted in Exhibit B is a report of alleged or suspected abuse or neglect made to the department by the Texas Department of Family and Protective Services. Additionally, we note report number 09048997, submitted as a part of Exhibit D, was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” 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). Upon review, we find Exhibit B and report number 09048997 are confidential under section 261.201 of the Family Code. Therefore, the department must withhold report number 09048997 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

In this instance, the requestor represents the parent of the child victims listed in Exhibit B who is suspected of committing the alleged abuse or neglect. As such, the submitted information may not be provided to the requestor pursuant to section 261.201(k) of the Family Code. *Id.* § 261.201(k) (stating child’s parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect if parent is alleged to have committed abuse or neglect). Accordingly, we conclude the department also must withhold Exhibit B from the requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime

¹As we reach this conclusion, we do not address your remaining claim for report number 09048997.

Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the information you have marked in green in Exhibit E constitutes CHRI which the department must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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 established. *Id.* at 681-82.

The types 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. In Open Records Decision No. 393 (1983), this office concluded that generally only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have a legitimate interest in such information);

²As we make this determination, we do not address your remaining claim for this information.

Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

We note the information submitted in Exhibit C is related to an investigation of an alleged sexual assault. The requestor in this case represents the suspect and knows the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common law right to privacy. We conclude, therefore, that the department must withhold Exhibit C in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.³

Next, you claim the remaining information in Exhibit D is excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the information at issue concerns criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we find section 552.108(a)(2) is generally applicable to the remaining information in Exhibit D.

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that the department must release a sufficient portion of the narratives to encompass a detailed description of the offenses to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of basic information, which includes a detailed description of the offenses, the department may withhold the remaining information in Exhibit D under section 552.108(a)(2) of the Government Code.

You claim some of the information in Exhibit E is excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 provides, in relevant part:

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

³As we make this determination, we do not address the department's section 552.108 claim for Exhibit C.

- (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.

Gov't Code § 552.130. Upon review, we determine the department must withhold the driver's license number we have marked under section 552.130 of the Government Code. However, you have also marked a number under section 552.130 identified in the documents as "SID." This number does not consist of information relating to a personal identification document issued by a Texas agency, or an agency of another state or country or a local agency authorized to issue an identification document for purposes of section 552.130, and it may not be withheld under section 552.130.

In summary, the marked dental records must be withheld under section 258.102 of the Occupations Code, unless the department receives consent for release that complies with section 258.104. Under section 552.101 of the Government Code, the department must withhold (1) Exhibit B and report number 09048997 in Exhibit D in conjunction with section 261.201 of the Family Code; (2) the CHRI you have marked in green in Exhibit E in conjunction with federal law and chapter 411 of the Government Code; and (3) Exhibit C in its entirety in conjunction with common-law privacy. With the exception of basic information, which includes a detailed description of the offenses, the department may withhold the remaining information in Exhibit D under section 552.108(a)(2) of the Government Code. The department must withhold the driver's license number we have marked under section 552.130 of the Government Code. The remaining information must be released.⁴

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,

⁴We note the information to be released contains a social security number. 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.

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,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/akg

Ref: ID# 452435

Enc. Submitted documents

c: Requestor
(w/o enclosures)