



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2012

Ms. Linda Hight
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033

OR2012-10243

Dear Ms. Hight:

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# 458422.

The City of Cleburne (the "city") received a request for a specified incident report. You state some information has been released. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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 section encompasses information made confidential by other statutes. Access to medical records is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .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). Medical records may only be released in accordance with the MPA. Occ. Code §§ 159.004-.005. Upon review, we find the information we have marked consists of information obtained from the records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created by a physician. Therefore, the marked information may be released only in accordance with the MPA.

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 section encompasses the common-law right to 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 met. *Id.* at 681-82.

Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). 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. 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. However, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information

for the purposes of section 552.101. Cf. Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to current involvement in the criminal justice system). This office has further found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. 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 is highly intimate or embarrassing and of no legitimate public interest. The city must withhold the marked information under section 552.101 in conjunction with common-law privacy. However, while the remaining information you marked may be highly intimate or embarrassing, we find there is legitimate public interest in this information. See generally *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity"; citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994)); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975) (public has legitimate interest in details of crime and police efforts to combat crime in community), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Accordingly, the remaining information you marked may not be withheld under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Therefore, the city must withhold the information we have marked under section 552.130.¹

In summary, the information we have marked may be released only in accordance with the MPA. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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

¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of requesting an attorney general decision.

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 cursive script that reads "Misty Haberer Barham".

**Misty Haberer Barham
Assistant Attorney General
Open Records Division**

MHB/eb

Ref: ID# 458422

Enc. Submitted documents

c: Requestor
(w/o enclosures)