



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2012

Ms. Donna L. Johnson
Counsel for the City of Cleveland
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2012-12359

Dear Ms. Johnson:

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# 461228 (Cleveland Ref. No. COC12-026).

The City of Cleveland (the "city"), which you represent, received a request for records involving two named individuals and an incident of family violence that occurred between April 1, 2012 and April 9, 2012. You state you will redact driver's license numbers pursuant to section 552.130 of the Government Code¹ and social security numbers pursuant to section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) of the Government Code without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). We note the requestor has a right of access to his own driver's license number. *See generally id.* § 552.023(a).

² 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 an attorney general decision under the Act. Gov't Code § 552.147(b). We note the requestor has a right of access to his own social security number. *See generally id.* § 552.023(a).

Initially, we note some of the submitted information is not responsive to the instant request because it does not pertain to the incident specified in the request. We have marked this non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release non-responsive information in response to the request.

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 encompasses section 58.005 of the Family Code, which provides that “[r]ecords and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals].” Fam. Code § 58.005(a). You contend the submitted information is confidential under section 58.005. You do not inform us, however, nor does the information at issue reflect that it was “obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court.” *Id.* We therefore conclude the city may not withhold any of the responsive information under section 552.101 of the Government Code on the basis of section 58.005 of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in part:

(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.

Fam. Code § 58.007(c). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find you have failed to demonstrate how any of the responsive information consists of juvenile law enforcement records. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”); *See id.* § 51.02(2) (defining “child”). Therefore, the city may not withhold any of the responsive information under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(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.

Fam. Code § 261.201(a). You do not inform us, nor does the responsive information reflect that it was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for purposes of ch. 261). Accordingly, we conclude that section 261.201(a) is not applicable to the responsive information, and the city may not withhold this information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *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). You claim portions of the responsive information are protected under the MPA. Upon review, we find the city failed to demonstrate how any of the responsive information constitutes medical records or information obtained from medical records that is subject to the MPA. Thus, the city may not withhold any of the responsive information under the MPA.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the responsive information pertains to a pending criminal investigation. Based upon this representation, we agree that section 552.108(a)(1) is applicable to the information at issue. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest 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*). Therefore,

except for basic information, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code.³

In summary, with the exception of basic information, the city may withhold the responsive information under section 552.108 of the Government Code. Basic 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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

Ref: ID# 461228

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive we need not address your remaining arguments against disclosure for this information, except to note basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597(1991).