



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 20, 2012

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2012-18726

Dear Ms. Lentz:

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# 471697.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requestor specifically excludes social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers from her request. Accordingly, these types of information are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, nor is the sheriff's office required to release non-responsive information to this requestor.

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Next, you inform us some of the submitted information consists of grand jury subpoenas and records obtained pursuant to those grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, the submitted medical information that is held by the sheriff's office as an agent of the grand jury consists of records of the judiciary not subject to disclosure under the Act, and we do not address its public availability. To the extent the submitted medical information is not held by the sheriff's office as an agent of the grand jury, we will address your arguments against disclosure of the submitted information.

Next, we note the submitted information includes court-filed documents. Subsection 552.022(a)(17) of the Government Code requires disclosure of "information that is also contained in a public court record," unless the information is confidential under the Act or "other law." Gov't Code § 552.022(a)(17). Although you seek to withhold these documents under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects only the governmental body's interests and may be waived. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act. Therefore, the marked court-filed documents may not be withheld under section 552.108. However, we note portions of these records are subject to section 552.130, which makes information confidential under the Act. Therefore, we will address the applicability of section 552.130 to the information subject to section 552.022(a).

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(2). Therefore, the sheriff's office must withhold the information you have marked in the court documents under section 552.130 of the Government Code.

Next, we address your arguments for the information not subject to section 552.022(a)(17). 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 information that other statutes make confidential, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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.

Occ. Code § 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). This office also has concluded when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990).

We have marked medical records relating to the requestor's minor child. If the medical information is not held by the sheriff's office as an agent of the grand jury, the sheriff's office must release the medical records we have marked if it receives consent from the requestor that complies with the MPA. Although you raise section 552.108 of the Government Code for this information, general exceptions in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, the sheriff's office may not withhold the marked medical records under section 552.108. However, we will consider your argument under section 552.108 for the remaining information not subject to the MPA.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 submitted information pertains to a pending criminal

investigation. Based upon your representation and our review, we conclude release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime. 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). Thus, section 552.108(a)(1) is applicable to the remaining submitted information.

We note 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The department must release basic offense and arrest information, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of the basic front page offense and arrest information, which must be released, the sheriff’s office may withhold the remaining submitted information based on section 552.108(a)(1) of the Government Code.<sup>2</sup> We note that the sheriff’s office has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the information that is held by the sheriff’s office as an agent of the grand jury consists of records of the judiciary and is not subject to disclosure under the Act. The court documents we have marked must be released pursuant to subsection 552.022(a)(17) of the Government Code. In releasing that information, the sheriff’s office must withhold the information you have marked under section 552.130 of the Government Code. If the medical information is not held by the sheriff’s office as an agent of the grand jury, then the marked medical records and information obtained from medical records may only be released in accordance with the MPA. With the exception of basic information, which must be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 "Jeffrey W. Giles". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 471697

Enc. Submitted documents

c: Requestor  
(w/o enclosures)