



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2013

Mr. Fred M. Barker
First Assistant County Attorney
Parker County
1118 West Columbia Street
Weatherford, Texas 76086

OR2013-04256

Dear Mr. Barker:

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# 481198.

The Parker County Sheriff's Office (the "sheriff's office") received a request for information related to five specified addresses during certain time periods. You state the sheriff's office has released some of the requested information to the requestor. We understand you will release the court document in packet 1, part C, disk number 9. You further state you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.107(2), 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.³

¹Section 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. *See* Gov't Code § 552.147(b).

²Although you also raised sections 551.108, 552.018, and 552.801 of the Government Code as exceptions to disclosure, based upon your arguments we assume you meant to claim section 552.108. We note the Public Information Handbook is available on the resources page of the Attorney General's website at https://www.oag.state.tx.us/open/og_resources.shtml#pia_hb.

³We note that if the information responsive to a request for information under the Act is voluminous, section 552.301(e)(1)(D) allows a governmental body to submit in its request for a ruling a representative samples of the information requested, rather than the specific information requested in its entirety. *See* Gov't Code § 552.301(e)(1)(D).

Initially, we address your contention that the information in Exhibit F and some of the information on disk number 16 in Part C of Packet 1 is not responsive to the instant request because these records are not related to the addresses specified in the request. We note, however, these records were compiled by the sheriff's office in conjunction with an investigation related to one of the specified addresses. Thus, we find these records are responsive to the present request, and we will address your arguments against disclosure for this information.

You inform us some of the submitted information consists of records obtained by the sheriff's office pursuant to 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 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.⁴ We will address your arguments against disclosure of the remaining submitted information that is not held by the sheriff's office as an agent of the grand jury.

We must next address the obligations of the sheriff's office under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. We note that although you timely raised other exceptions, you did not raise section 552.107(2) of the Government Code until after the ten-business-day deadline had passed. Consequently, we find the sheriff's office failed to comply with the procedural requirements of section 552.301 with respect to its claims under section 552.107(2).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.107(2) of the Government Code can

⁴As we reach this conclusion, we do not address your claimed exceptions for this information.

provide a compelling reason to overcome this presumption, we will consider whether this section requires you to withhold any of the submitted information.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). Article 18.20 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the interception of wire, oral, or electronic communications; the installation or use of a pen register, ESN reader, trap and trace device, mobile tracking device, or similar equipment; or the disclosure of a stored communication, information subject to an administrative subpoena, or information subject to access under article 18.21 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 18.20 §§ 6, 9; *see also id.* § 1 (defining terms). Section 11 of article 18.20 states “[t]he judge shall seal each application made and order granted under this article.” *Id.* § 11. Article 18.21 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment. *See* Crim. Proc. Code art. 18.21 § 2; *see also id.* § 1 (defining terms). Article 18.21 also permits a court to issue an order authorizing the disclosure of contents, records, or other information of a wire or electronic communication. *See id.* § 5. Section 2 of article 18.21 states the court “shall seal an application and order granted under this article.” *Id.* § 2(g). In this instance, the submitted documents in Exhibit E consist of court orders granted under articles 18.20 and 18.21 and the corresponding applications for the orders. You state, and the orders and applications likewise reflect, that all the documents at issue are filed under seal. As the documents in Exhibit E have been sealed by a court pursuant to articles 18.20 and 18.21, we conclude the sheriff’s office must withhold Exhibit E under section 552.107(2) of the Government Code.

Section 552.108(a)(1) 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 . . . 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 information you seek to withhold under section 552.108 relates to pending criminal prosecutions. Based upon this representation, we find the release of the information at issue 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).

Therefore, the sheriff's office may withhold the information at issue, which we have marked, under section 552.108(a)(1) of the Government Code.⁵

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 encompasses information protected 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 that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find some of the information in part F of packet 1 constitutes medical records or information obtained from medical records. Accordingly, the sheriff's office must withhold the medical records in part F of packet 1 under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which governs the public availability of mental health records and provides:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

⁵As we make this determination, we need not address your remaining arguments against disclosure of this information.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find the remaining information in part F of packet 1 consists of mental health records. Therefore, the mental health records in part F are confidential under section 611.002 of the Health and Safety Code, and the sheriff’s office must withhold this information under section 552.101 of the Government Code.

We note some of the remaining information consists of criminal history record information (“CHRI”). Section 552.101 of the Government Code also encompasses laws that make CHRI confidential. CHRI generated by the National Crime 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 §§ 411.081-.1409. 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). 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 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we conclude the sheriff’s office must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

You state the sheriff’s office has redacted driver’s license numbers from the submitted information under section 552.130(c) of the Government Code.⁶ Section 552.130(a)(1) of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a)(1). We conclude the sheriff’s office must withhold the additional information we have marked under section 552.130(a)(1) of the Government Code.

⁶Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). Gov’t Code § 552.130(c); *see also id.* § 552.130(d)-(e).

In summary, the submitted 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. The sheriff's office must withhold Exhibit E under section 552.107(2) of the Government Code. The sheriff's office may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold (1) the medical records in part F of packet 1 under section 552.101 of the Government Code in conjunction with the MPA, (2) the mental health records in part F of packet 1 under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, (3) the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code, and (4) the additional information we have marked under section 552.130(a)(1) 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 481198

Enc. Submitted documents

c: Requestor
(w/o enclosures)