



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2013

Mr. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2013-14451

Dear Mr. Middlebrooks:

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# 496626 (DPD PIR# 2013-06392).

The Dallas Police Department (the "department") received a request for information regarding a named police officer. You claim portions of the requested information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. 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

¹We 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 those submitted to this office.

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. Upon review, we find most of the information you have marked consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created by a physician or information obtained from those records. However, a portion of the information at issue, which we have marked for release, does not consist of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician or information obtained from those records. Accordingly, the information we have marked for release is not subject to the MPA and may not be withheld under section 552.101 of the Government Code on that basis. Therefore, with the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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 demonstrated. *Id.* at 681-82. 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. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. Thus, we find the department must withhold the identification number you have marked under section 552.136 of the Government Code.

Finally, we note you have also raised section 552.101 of the Government Code in conjunction with section 773.092 of the Health and Safety Code. However, you have not identified any information you wish to withhold under this statute, and we note none of the remaining information is subject to this statute. Accordingly, this ruling does not address this argument.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The department must withhold the identification number you have marked under section 552.136 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.texasattorneygeneral.gov/open/>

³As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 496626

Enc. Submitted documents

c: Requestor
(w/o enclosures)