



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2014

Sgt. Alex Arnold  
Northlake Police Department  
1400 FM 407  
Northlake, Texas 76247

OR2014-02144

Dear Sgt. Arnold:

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# 513096.

The Northlake Police Department (the "department") received a request for information relating to a named individual's arrest and related investigation.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the department received the request for information on November 12, 2013. As of the date of this letter, you have not submitted a copy of the written request for information. Consequently, we find the department failed to comply with section 552.301 of the Government Code.

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<sup>1</sup>Since you did not submit the requestor's written request for information, we take our description from your brief to this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because sections 552.101, 552.130, and 552.147 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to 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 protected by other statutes, such as chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.<sup>2</sup> The submitted information contains a CR-3 Texas Peace Officer's Crash Report. In this instance, there is no indication the requestor has provided the department with two of the three pieces of required information pursuant to section 550.065(c)(4). Accordingly, the department must withhold the submitted CR-3 accident report, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code from this requestor.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code. Section 730.004 provides:

[n]otwithstanding any other provisions of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

*Id.* § 730.004. Section 730.003 provides, for purposes of chapter 730 of the Transportation Code:

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<sup>2</sup>*See* Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency or political subdivision of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

*Id.* § 730.003(1), (4). Section 730.004 applies only to an agency that compiles or maintains motor vehicle records. *See id.* § 730.003(1). The responding individual has not provided any explanation, or otherwise demonstrated, that the department compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to the department. Consequently, the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Section 552.101 of the Government Code also encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant 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. 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). Upon review, we find the information we have marked constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the department must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA.

We understand you to raise section 552.101 of the Government Code in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010), for the dates of birth contained in the submitted information. In *Texas Comptroller*, the Texas Supreme Court held section 552.102(a) of the Government Code exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. 354 S.W.3d at 336. Accordingly, *Texas Comptroller* applies only to a public employee's birth date maintained by the employer in an employment context. In this instance, the birth dates at issue do not belong to a public employee and are not held by the department in an employment context. Therefore, we conclude the department may not withhold the dates of birth at issue under section 552.101 of the Government Code on the basis of the ruling in *Texas Comptroller*.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit or 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. Gov't Code § 552.130(a). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Some of the driver's license information pertains solely to a deceased individual. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>3</sup> However, we find no portion of the remaining information is subject to section 552.130 and the department may not withhold it on that basis.

Section 552.147(a) of the Government Code exempts the social security number of a living individual from public disclosure. Gov't Code § 552.147. Upon review, we find the department may withhold the social security number we have marked under section 552.147

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<sup>3</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) 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).

of the Government Code.<sup>4</sup> However, we find no portion of the remaining information is subject to section 552.147 and the department may not withhold it on that basis.

In summary, the department must withhold (1) the submitted CR-3 accident report, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, (2) the medical records we have marked under section 552.101 in conjunction with the MPA, and (3) the motor vehicle record information we have marked under section 552.130 of the Government Code. The department may withhold the social security number we have marked under section 552.147 of the Government Code. The department must release the remaining information.

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/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/akg

Ref: ID# 513096

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note 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 a decision from this office. See Gov't Code § 552.147(b).