



September 16, 1999

Ms. Rosalinda O. Fierro, CLA
Records Department
Office of the District Attorney
P.O. Box 1748
Austin, Texas 78767

OR99-2591

Dear Ms. Fierro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127288.

Travis County (the "county") received a request for records which relate to the prosecution of criminal cases in which Mr. John Lassoff is the defendant. You indicate that you have released some of the responsive information but claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code requires withholding information made confidential by law. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). 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 the information 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 the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, 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.

The submitted documents contain records of the psychological treatment and evaluation of a patient. Health and Safety Code section 611, with release provisions that do not apply here, makes confidential records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder. These records must therefore be withheld in their entirety.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

The section 552.101 exception also applies to information made confidential by the common-law right to privacy. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Id.* Financial information concerning an individual is in some cases protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). We conclude that the information that you have marked as financial information must be withheld under section 552.101 of the Government Code.

Access to medical records is not governed by chapter 552 of the Government Code, but rather by the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. See V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990). The department may only release this information in accordance with the MPA.

The submitted documents also includes information excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

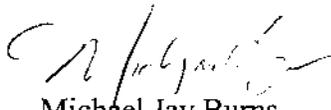
- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the driver's license number, VIN number, and the license plate number pursuant to section 552.130.

You relate that the county is in possession of all law enforcement records compiled in the course of the subject investigation and that it has released that portion of this information compiled by county attorneys. We construe your position to be that the remaining information was compiled by other prosecutors and support staff, in anticipation of criminal litigation and is thereby excepted from disclosure by section 552.108(a)(3) of the Government Code. This section excepts from required public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if it is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation. We conclude that information in the prosecution file may be withheld. However, note that section 552.108 does not excepted "basic information" about a crime or arrest. Gov't. Code § 552.108(c). Information normally found on the front page of an offense report is generally considered public. *Houston Chronicle*, 531 S.W.2d 177 (Tex. Civ. App. – Houston[14th Dist.] 1975), *writ ref'd n.r.e. per curiam*. Thus, you must release the type of information that is considered to be front page offense report information, including a detailed description of the offense and any arrests, even if this information is not actually located on the front page of the offense report. See Open Records Decision No. 127 (1976). Other than "basic" information, the prosecution files may be withheld under section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 127288

Encl. Submitted documents

cc: Ms. Marie Reed
c/o Cirkiel & Associates, P.C.
1901 Palm Valley Boulevard
Round Rock, Texas 78664
(w/o enclosures)