



May 11, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-1942

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147051.

The Texas Department of Public Safety (the “department”) received a request for any and all accident reports, incident reports, offense reports, driving while intoxicated reports, and other written documents related to a specified automobile accident. The department has released most of the requested information. You claim that submitted medical records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Access to medical records is governed by the Medical Practice Act (the “MPA”), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

- (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.

Section 159.002(b) makes confidential records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Occ. Code §§ 159.002(c), .004, .005; Open Records Decision No. 598 (1991). We have marked those documents which are subject to the MPA and may be released only in accordance with the MPA.

The remainder of the submitted documents are not excepted from disclosure under the MPA and must be released, but they contain information which is possibly protected from disclosure under other applicable law. Federal law may prohibit disclosure of the social security numbers included in the records that must be released. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).* Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the department should ensure that the information is not confidential under this federal statute.

In summary, we have marked the information that you must withhold under the MPA. You must release the remainder of the information, as it is not excepted from disclosure by the exception you have raised. However, you may have to withhold social security numbers from the remainder of the information if they were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

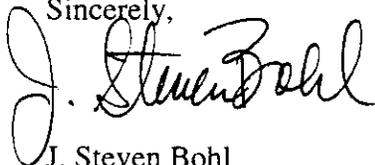
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/seg

Ref: ID# 147051

Encl: Marked documents

cc: Mr. William S. Helfand
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(w/o enclosures)