



June 10, 2002

Ms. Meredith A. Ladd  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004-0231

OR2002-3126

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164083.

The City of Arlington (the "city") received a request for information pertaining to an incident December 10, 1999 involving a named individual on an Arlington Handitran. You state that you are making some of the requested information available to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.107 and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The city raises section 552.115 of the Government Code for Exhibit B-1. Section 552.115 provides that a birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure. In this instance, the submitted death certificates are held by the city. Section 552.115 applies only to a death certificate that is maintained by the bureau of vital statistics or a local registration official. Therefore, the city may not withhold the submitted death certificates under section 552.115. *See also* Open Records Decision No. 338 (1982).

You contend that the information in Exhibit B-2 is made confidential under the Medical Practice Act, (the "MPA"), chapter 159 of the Occupations Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 159.002 provides in pertinent part:

(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( b), (c). The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained directly from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). Based on our review of Exhibit B-2 and your arguments, we agree that a portion of the information in Exhibit B-2 is subject to the MPA. We have marked the information that the city may release only in accordance with the MPA. The remaining information does not constitute medical records because it is either billing record information or it is not a confidential communication or record as described by the MPA. *See* Occ. Code §§ 159.001, 159.002.

We note that the city has also submitted an EMS report that is excepted from public disclosure under section 773.091(b) of the Health and Safety Code. Section 773.091 of the Health and Safety Code provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

.....

(g)The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Thus, the submitted EMS report, except for the information specified in subsection (g), is deemed confidential by section 773.091 and, therefore, may be released only in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094.

You claim that the information in Exhibit B-3 is excepted under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his or her client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). You assert that "[t]he documents in Exhibit B-3 are confidential attorney opinions and communications with the client." However, you do not explain how the first document reveals an attorney-client communication. *See* Gov't Code § 552.301(e)(1)(A). Accordingly, this document may not be withheld under section 552.107. We agree that the second record in Exhibit B-3 documents confidential attorney-client communications and may be withheld pursuant to section 552.107.

Finally, we note that the submitted records contain a social security number of a former employee. Section 552.117 excepts from disclosure the social security number of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the employee at issue here timely elected to keep her personal information confidential, the city must withhold the employee's social security number. The city may not withhold this information under section 552.117 if the employee did not make a timely election to keep her social security number confidential.

If the employee did not timely elect to keep her social security number confidential, the number may nevertheless be confidential. Under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), a social security number is confidential 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 at 2-4 (1994). You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information.

Therefore, prior to releasing the former employee's social security number the city should ensure that the number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the information in Exhibit B-2 which we have marked may be released only in accordance with the provisions of the MPA. The EMS report, which we have marked, may be released only in accordance with Chapter 773 of the Health and Safety Code. The information in Exhibit B-3 which we have marked may be withheld under section 552.107. The city must withhold the former employee's social security number if the employee timely elected to keep her personal information confidential. The city must withhold the social security number under section 552.101 of the Government Code in conjunction with the federal Social Security Act if the social security number was obtained or is maintained by the city pursuant to a provision of law enacted on or after October 1, 1990. The city must release the remainder of the requested information to the requestor.

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).

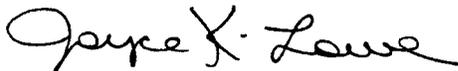
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Joyce K. Lowe  
Assistant Attorney General  
Open Records Division

JKL/sdk

Ref: ID# 164083

Enc: Submitted documents

c: Ms. Calandra Matias  
Office Manager  
Padic & Co  
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(w/o enclosures)