



October 24, 2002

Mr. John Feldt
Assistant District Attorney
Denton County District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2002-6041

Dear Mr. John Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171182.

The Denton County District Attorney's Office (the "district attorney") received a request for information regarding a motor vehicle accident that took place on March 6, 2002 on Jim Christal Road. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code and under the Medical Practice Act (the "MPA"). We have considered the exceptions you claim and reviewed the submitted information.

You contend that Exhibit F contains records that are subject to the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in relevant 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 . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that 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 of the submitted information, it appears that most of the submitted

documents were not created or maintained by a physician or someone under the supervision of a physician. Moreover, most of the submitted documents do not contain information obtained from medical records.

We note, however, that Exhibit F contains portions of two autopsy reports that were created by a physician. The MPA defines a "patient" as "a person who, to receive medical care, consults with or is seen by a physician." Occ. Code § 159.001. We do not believe that a deceased individual can be a "patient" under section 159.001 of the Occupations Code. In other words, the MPA protects only the medical records of patients who were alive at the time the records were created. Therefore, the submitted portions of the autopsy reports are not subject to the MPA. *See also* Open Records Decision No. 272 (1981) (right of privacy lapses upon death). Accordingly, we find that none of the submitted documents are subject to the MPA.

We also note that included among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the 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. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety 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. *Id.* In the situation at hand, the requestor has provided the district attorney with two of the three pieces of information. Thus, the district attorney must release the accident report, which we have marked, under section 550.065(c)(4) of the Transportation Code.

Next, we note that Exhibit F includes documents that are indicated to have been filed with a court, and thus appear to constitute information that is also contained in a public court record. *See* Gov't Code § 552.022(a)(17). Therefore, as prescribed by section 552.022, these public court documents must be released to the requestor unless they are confidential under other law. Sections 552.103 and 552.108 are discretionary exceptions under the Public Information Act and are therefore not "other law" that makes information confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Further, the submitted documents that are indicated to have been filed with a court do not contain information that is subject to section 552.101 or 552.130 of the Government Code. Therefore, to the extent the information we have marked in Exhibit F is also contained in a public court record, it is not excepted from required disclosure and must be made available to the requestor.

We will now address your argument under section 552.108 with respect to the remaining information. Section 552.108(a)(1) of the Government Code excepts from disclosure

information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You indicate that the requested information relates to a pending criminal case. Accordingly, we find that release of the remaining information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, which includes a detailed description of the offense. Thus, with the exception of the basic front page offense and arrest information, you may withhold the remaining information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

To summarize, we conclude that (1) the district attorney must release the accident report, which we have marked, under section 550.065(c)(4) of the Transportation Code; (2) to the extent the information we have marked in Exhibit F is also contained in a public court record, it is not excepted from required disclosure and must be made available to the requestor; and (3) with the exception of the basic front page offense and arrest information, the district attorney may withhold the remaining information from disclosure under section 552.108(a)(1).

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 171182

Enc: Submitted documents

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