



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 13, 2003

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR2003-5653

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185896.

The University of Texas Medical Branch at Galveston ("UTMB") received a request for "offense, incident, and investigative reports" regarding a specified person and in relation to a specified incident. You have submitted as responsive to the request a copy of the information that pertains to the specified incident. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we note that the requestor, who is a staff investigator with the State Board for Educator Certification (the "SBEC"), states that the SBEC is conducting an investigation of an individual who has applied for or currently holds educator credentials. The requestor specifically seeks "copies of all offense, incident, and investigative reports" regarding the named individual. Section 22.082 of the Education Code provides that "the [SBEC] shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to an applicant for or holder of a certificate." Additionally, section 411.090 of the Government Code specifically grants a right of access for the SBEC to obtain criminal history record information ("CHRF") from the Department of Public Safety ("DPS"). Section 411.090 provides:

- (a) The [SBEC] is entitled to obtain from [DPS] any criminal history record information maintained by the department about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.

Gov't Code § 411.090. Furthermore, pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2).

We find that, when read together, section 22.082 of the Education Code and sections 411.087 and 411.090 of the Government Code give the SBEC a statutory right of access to portions of the submitted information. See Gov't Code § 411.082(2); cf. *Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Accordingly, we conclude that UTMB must release information from the submitted documents to this requestor that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Public Information Act).¹ We have also marked additional CHRI information contained within the submitted documents that must be released to the requestor in this instance. See Gov't Code § 411.082(2).

We now address the remaining submitted information. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. See Gov't Code § 552.108(a)(2). You state that the submitted information pertains to an incident that did not result in a conviction or deferred adjudication as the charges associated with the incident were ultimately dropped and the investigation was closed. Thus, we understand from your representations that UTMB contends that the submitted information pertains to a case that has concluded in a final result other than conviction or deferred adjudication. Accordingly, we find that section 552.108(a)(2) is applicable to the remaining submitted information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). See Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information, we conclude that UTMB may withhold the remaining submitted information pursuant to section 552.108(a)(2) of the Government Code.

¹ We note that because the requestor has a special right of access to this information in this instance, UTMB must again seek a decision from this office if it receives another request for the same information from another requestor.

You contend, however, that the complainant's identifying information and information revealing the location of the crime alleged in this matter is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law and constitutional rights to privacy.² Information is protected from disclosure under the common-law right to privacy if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* t 683.

The constitutional right to privacy encompasses two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type of constitutional privacy protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *See id.* The scope of information protected by constitutional privacy is narrower than that under the doctrine of common-law privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from disclosure under the constitutional or common-law rights to privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). After carefully reviewing your arguments and the complainant-identifying and location-identifying information that you seek to withhold, we find that no portion of this information is highly intimate or embarrassing or would otherwise implicate the constitutional or common-law privacy rights of any individual involved in this matter. Accordingly, we conclude that UTMB may not withhold any portion of this particular information under section 552.101 of the Government

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law and constitutional rights to privacy.

Code in conjunction with the constitutional or common-law rights to privacy. Consequently, UTMB must release this information to the requestor.

In summary, UTMB must release information from the submitted documents to this requestor that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. UTMB must also release in this instance additional CHRI information that we have marked within the submitted documents. With the exception of basic information that must also be released, UTMB may withhold the remaining submitted information pursuant to section 552.108(a)(2) of the Government Code.

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 Dep't of Pub. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 185896

Enc. Submitted documents

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