



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 15, 2003

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2003-6426

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187587.

The College Station Police Department (the "department") received a request for police report number 03-00500. You inform us that the department has withheld Texas driver's license numbers in accordance with the previous determinations issued in Open Records Letter Nos. 2001-5847 (2001) and 2002-2022 (2002). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that portions of the requested information are medical records, access to which 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.

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also 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. Open Records Decision No. 598 (1991). We have marked the documents which are medical records subject to the MPA.

Next, we address your claim with regard to the remaining information under section 552.108 of the Government Code. Section 552.108 of the Government Code provides pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release

of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remainder of the submitted information consists of the department's investigation file. You also state that the information relates to a pending criminal prosecution by the Brazos County court. Based on your representations and our review, we determine that the release of the remaining submitted 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 does not except from disclosure 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*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information must be released to the requestor.¹ The department may withhold the remainder of the submitted information from disclosure based on section 552.108(a)(1). Although section 552.108(a)(1) authorizes the department to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, medical records may be released only as provided under the MPA. With the exception of basic information, the department may withhold the remainder of the submitted information pursuant to section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we do not reach your other arguments against disclosure.

Finally, you request that this office issue a "previous determination" that would permit the department in the future to withhold from disclosure "police reports which did not result in conviction or deferred adjudication" without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a

¹We note that you also raise section 552.103 of the Government Code. Basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991). We therefore do not address your claim under section 552.103 with respect to basic information about the incident at issue.

previous determination at this time. 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

Ms. Angela M. DeLuca - Page 5

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 187587

Enc. Submitted documents

c: Mr./Ms. Kelly S. Stanton
Humana Insurance Company
1100 Employers Boulevard
Green Bay, Wisconsin 54344
(w/o enclosures)