



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2006

Mr. J. David Dodd, III
City of Sachse
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2006-14102

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 265876.

The City of Sachse (the "city"), which you represent, received a request for any job application submitted to the city by a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.119, 552.129, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The exception encompasses information made confidential by other statutes. You claim that a portion of the submitted information is excepted from disclosure under section 552.101 in conjunction with the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in 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). 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). We have further found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). The submitted information consists of a job application and is not a record created by a physician that pertains to the diagnosis, treatment, or evaluation of a patient. Thus, no portion of the submitted information constitutes medical records for purposes of the MPA. Therefore, none of the submitted information may be withheld under section 552.101 on this basis.

You also raise section 552.101 in conjunction with article 20A.25 of the Insurance Code. However, article 20A.25 was repealed effective June 1, 2003. *See* Acts 2001, 77th Leg., ch. 1419, § 31(b)(13) *repealing* Acts 1975, 64th Leg., ch. 214, § 25. We therefore conclude that the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with article 20A.25 of the Insurance Code.

You also raise section 552.101 in conjunction with section 411.034 of the Labor Code, which provides in pertinent part:

- (a) The identity of an employee in a report filed under Section 411.032 is confidential and may not be disclosed as part of the job safety information system.
- (b) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this section to a person not authorized to receive the information.
- (c) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this section and that the person is not authorized to receive.

Labor Code § 411.034(a) - (c). Section 411.032(a) provides:

- (a) an employer shall file with the commission a report of each:
 - (1) on-the-job injury that results in the employee's absence from work for more than one day; and

(2) occupational disease of which the employer has knowledge.

Labor Code § 411.032(a). These statutes make confidential the identity of an employee who suffers an on-the-job injury or occupational disease reported to the Workers' Compensation Division of the Texas Department of Insurance. The submitted information does not reveal the identity of an employee who suffers an on-the-job injury or occupational disease reported to the Workers' Compensation Division of the Texas Department of Insurance. Therefore, none of the submitted information may be withheld under section 552.101 on this basis.

You also raise section 552.101 in conjunction with section 84.006 of the Health and Safety Code, which makes confidential information reported to the Texas Department of State Health Service (the "DSHS") regarding "a disease, abnormal health condition, or laboratory finding that is caused by or is related to exposures in the workplace." Health & Safety Code § 84.002(2). Section 84.006 provides in part:

(a) All information and records relating to reportable conditions are confidential, including information from injury investigations. That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person is not identified;
- (2) with the consent of each person identified in the information released; or
- (3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

Health & Safety Code § 84.006(a); *see also* 25 T.A.C. § 99.1. You have not explained, and it is not otherwise apparent, how any of the submitted information pertains to occupational conditions reported to the DSHS. Therefore, none of the submitted information may be withheld under section 552.101 on this basis.

You also raise section 552.101 in conjunction with section 92.006 of the Health and Safety Code, which makes confidential information reported to the DSHS regarding "[s]pinal cord injuries, traumatic brain injuries, and submersion injuries" Health & Safety Code § 92.002. Section 92.006 provides in relevant part as follows:

(a) All information and records relating to injuries are confidential, including information from injury investigations. That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person is not identified;

- (2) with the consent of each person identified in the information released; or
- (3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

Health & Safety Code § 92.006(a); *see also* 25 T.A.C. § 103.22. You have not explained, and it is not otherwise apparent, how any of the submitted information pertains to injuries reported to the DSHS. Therefore, none of the submitted information may be withheld under section 552.101 on this basis.

Section 552.101 also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy under section 552.101 protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Common-law privacy also encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 at 9-12 (1992)* (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked personal financial information that must be withheld under section 552.101 in conjunction with common-law privacy.

You also assert that the submitted information is subject to section 552.108 of the Government Code. Section 552.108 provides:

- (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;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
- (3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or
- (4) it is information that:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
- (3) the internal record or notation:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the

information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You assert that section 552.108 excepts from disclosure “[i]nformation relating to any threat against a peace officer.” However, you have not explained, nor is it apparent from our review, how the requested job application relates to a threat against a peace officer. Furthermore, you have not explained how or why section 552.108 is otherwise applicable to any of the submitted information. Therefore, the city may not withhold any of the information under section 552.108.

We next address your argument under section 552.117(a)(2) of the Government Code, which excepts from disclosure a peace officer’s home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175. *See Gov’t Code* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We understand that the applicant at issue was subsequently employed by the Sachse Police Department. Therefore, the city must withhold the information we have marked pursuant to section 552.117(a)(2).¹

You claim that some of the remaining information is excepted from public disclosure under section 552.119 of the Government Code. Section 552.119 provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

¹As our ruling on this issue is dispositive, we need not address your remaining arguments for the information at issue.

Gov't Code § 552.119. You have not submitted any photographs. We therefore determine that the city may not withhold any of the submitted information under section 552.119 of the Government Code.

We next address your claim under section 552.129 of the Government Code, which provides as follows:

A record created during a motor vehicle emissions inspection under Subchapter F, Chapter 548, Transportation Code, that relates to an individual vehicle or owner of an individual vehicle is excepted from [required public disclosure].

Gov't Code § 552.129. Upon review, we find that no portion of the submitted information pertains to a motor vehicle emissions inspection. Therefore, no portion of the submitted information may be withheld on this basis.

Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. We have marked the Texas motor vehicle record information that must be withheld under section 552.130.²

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The city must withhold the insurance policy number we have marked under section 552.136.

In summary, the city must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as sections 552.117(a)(2), 552.130, and 552.136 of the Government Code. The remaining information must be released 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

²As our ruling under this issue is dispositive of the submitted motor vehicle record information, we do not address your remaining arguments for this information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 265876

Enc. Submitted documents

c: Ms. Becky Oliver
Fox 4 News
c/o J. David Dodd, III
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