



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 7, 2006

Mr. W. Clayton Cain  
Cullen, Carsner, Seerden, & Cullen, LLP  
P.O. Box 2938  
Victoria, Texas 77902-2938

OR2006-14399

Dear Mr. Cain:

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# 266353.

Dewitt County (the "county"), which you represent, received a request for ten categories of information pertaining to the incarceration of a named individual in the Dewitt County Jail. You state that you have provided information responsive to two categories of the request. Additionally, you state that you have no information responsive to three categories of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you contend that four of the remaining categories of the request "are not proper requests for information under the Open Records Act" because they are in the form of an interrogatory that require analysis and/or questioning of the employees of Dewitt County Jail[.] In responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body has a duty to make a good faith effort to relate a request for information to information that the

governmental body holds. Open Records Decision No. 561 at 8 (1990). Thus, the county must make a good faith effort to relate the requestor's questions to any responsive information that is held by or on behalf of the county. To the extent such information existed when the county received this request, it must be released, unless you have already done so. *See* Gov't Code § 552.221, .301, .302; Open Records Decision No. 664 (2000).

We turn now to the exceptions you have raised for the submitted information, and begin with section 552.134, as it is the most inclusive exception you claim. This section states that

[e]xcept as provided by Subsection (b) [of section 552.134] or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Thus, section 552.134 is applicable to information that relates to an inmate of the Texas Department of Criminal Justice. The submitted information relates to an inmate of the Dewitt County jail. You do not explain, and it is not otherwise clear, how or why section 552.134 would be applicable to any of the submitted information. We therefore conclude that the county may not withhold any of the submitted information under section 552.134.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations, which governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the

Government Code. We have marked the confidential CHRI that must be withheld under section 552.101.<sup>1</sup>

Next, we note that a portion of the submitted information constitutes medical records that are confidential under section 552.101 in conjunction with the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). 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). Medical records must be released upon the governmental body's receipt of 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. *See* Occ. Code §§ 159.004, .005. The consent must specify (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. *See* Open Records Decision No. 565 at 7 (1990). We have marked the medical record information that is subject to the MPA. In this instance, we are unable to determine whether the requestor is an attorney representing the individual whose information is at issue, and therefore has authority to receive the submitted medical records. Consequently, we have marked the submitted information that constitutes medical records which must be released upon the department's receipt of a proper authorization under the MPA. In the

---

<sup>1</sup>We note that the individual to whom this information pertains can obtain his own CHRI from DPS. Gov't Code § 411.083(b)(3).

absence of a proper authorization to release, the marked medical records must be withheld from the requestor pursuant to the MPA. Open Records Decision No. 598 (1991).

The submitted documents also contains fingerprint information. Section 552.101 additionally encompasses sections 560.001, 560.002, and 560.003 of the Government Code. These sections govern the public availability of fingerprint information and provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
  - (A) the individual consents to the disclosure;
  - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
  - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001, 560.002, 560.003. As previously noted, our office is unable to determine if the requestor is representing the individual whose information is at issue. To

the extent the requestor represents the individual whose fingerprints are at issue, the requestor will have a right of access under section 560.002 to the fingerprint information that we have marked. To the extent the requestor does not represent the individual whose fingerprint information is at issue, this marked information must be withheld pursuant to section 560.003 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked information that is protected by common-law privacy. In the event that the requestor represents the individual whose information is at issue, he will also have a special right of access to this information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). Otherwise, the county must withhold this marked information pursuant to section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state.<sup>2</sup> Gov't Code § 552.130. Therefore, the county must withhold the Texas motor vehicle record information we have marked under section 552.130. To the extent the requestor is acting as the authorized representative of the individual whose Texas motor vehicle record information is at issue, the requestor has a special right of access to such information. *See* Gov't Code § 552.023.

The remaining submitted information contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>3</sup> Gov't Code § 552.147. To the

---

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

extent the requestor is acting as the authorized representative of the individual whose social security number is at issue, the requestor has a right of access to this marked information as well. *See* Gov't Code § 552.023.

In summary, the county must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. In the absence of a proper authorization to release, the county must withhold the medical records we have marked pursuant to the MPA. The county must withhold the information we have marked under section 560.003 of the Government Code. To the extent the requestor represents the individual whose information is at issue, the requestor will have a right of access under section 560.002 to the marked fingerprint information. The county must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy, the marked Texas motor vehicle record information under section 552.130, and the marked social security number under section 552.147. To the extent the requestor represents the individual whose information is at issue, the requestor will have a right of access to this marked information pursuant to section 552.023. The remaining information must be released.

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, 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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/eb

Ref: ID# 266353

Enc. Submitted documents

c: Ms. Gail Dorn  
Attorneys at Law  
P.O. Box 23064  
Corpus Christi, Texas 78403  
(w/o enclosures)