



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2006

Ms. M. Ann Montgomery  
Assistant Ellis County & District Attorney  
Ellis County  
Temporary Administrative Bldg  
1201 N. Hwy. 77, Ste. 104  
Waxahachie, Texas 75165-7832

OR2006-01342

Dear Ms. Montgomery:

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# 242111.

The Ellis County and District Attorney's Office (the "district attorney") received a request for all information related to a named individual who is the requestor's client. You state you have released some responsive information to the requestor.<sup>1</sup> However, you claim that certain responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the district attorney's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(A), (D).

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<sup>1</sup>We note that you have submitted two sets of documents to our office, one designated as "complete information not sent to requestor" and the other as "redacted information sent to the requestor." However, upon review of both sets of documents, we are unable to discern what submitted information the district attorney actually released to the requestor and what information has been withheld. Accordingly, we will address all of the submitted information regardless of how the information has been categorized. *Cf.* Gov't Code 552.007 (governmental body that voluntarily releases information to any member of the public may not withhold such information from further disclosure unless its public release is expressly prohibited by law); Open Records Decision No. 518 at 3 (1989).

You have redacted information in the documents you have submitted to us.<sup>2</sup> You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(2); Open Records Decision 673 (2000). Therefore, the district attorney has failed to comply with section 552.301(e) in regards to the redacted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977).

We are not able to discern the nature of the information you have redacted. Thus, because we are not able to review this redacted information, we have no means of determining whether it is excepted from release pursuant to the Act. We therefore have no choice but to order the redacted information, which we have marked, be released pursuant to section 552.302. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

Next, we note that the submitted information includes arrest warrants, an affidavit for an arrest warrant signed by a magistrate, and an unsigned affidavit for an arrest warrant. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, the arrest warrants and affidavit signed by a magistrate, which we have marked, must be released in their entirety pursuant to article 15.26 of the Code of Criminal Procedure. To the extent the marked affidavit for arrest warrant that is unsigned was presented to a magistrate in support of the issuance of an arrest warrant, it is public under article 15.26 of the Code of Criminal Procedure and must also be released. To the extent this unsigned affidavit was not presented to a magistrate, we will address it together with the other submitted information.

Further, a portion of the submitted information constitutes medical records pertaining to the requestor's client, access to which is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

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<sup>2</sup>The information at issue is on page five of the Texas Department of Public Safety Traffic Law Enforcement Division Offense Report dated December 14, 2003, and has been redacted with white correction fluid.

(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). 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). 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).

Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). 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). We have marked the submitted information that constitutes medical records of the requestor's client. These medical records may only be released in accordance with the MPA.

The submitted information also includes blood test results. Upon the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. The requestor is the attorney for the person whose blood was tested. Thus, you must release the blood test results to the requestor.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses information made confidential by statute. The submitted information includes a ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code 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. Transp. Code § 550.065(c)(4). In this instance, the requestor has not provided the district attorney with two of the three pieces of information specified by section 550.065. Thus, you must withhold this accident report under section 552.101 in conjunction with section 550.065(b).

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations 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 Texas 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. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See* Gov’t Code § 411.082(2)(B) (term CHRI does not include driving record information). Therefore, the district attorney must withhold the CHRI that we have marked under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 also encompasses the doctrines of common law and constitutional privacy. Common law privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Constitutional privacy consists of 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. Open Records Decision No. 455 at 4 (1987). We understand you to claim that some of the submitted information is protected by common law and constitutional privacy. However, upon review of the remaining information at issue, we find no information that is confidential under common law or constitutional privacy. Thus, none of the requested information may be withheld under section 552.101 on that basis.

We note the submitted information includes Texas motor vehicle information. 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[.]”<sup>3</sup> Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the district attorney must withhold the Texas motor vehicle information we have marked. *See* Gov’t Code § 552.130. The requestor has a special right of access to his client’s Texas motor vehicle record information; therefore, his client’s Texas motor vehicle information must be released to him. *See* Gov’t Code § 552.023 (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles).

In summary, the redacted information, which we have marked, must be released to the requestor pursuant to section 552.302. The marked arrest warrants and affidavit signed by a magistrate must be released pursuant to article 15.26 of the Code of Criminal Procedure. To the extent the marked affidavit that is unsigned was presented to a magistrate in support of the issuance of an arrest warrant, that document must be released pursuant to article 15.26. To the extent this unsigned affidavit was not presented to a magistrate, it must be released as set forth below. The district attorney must release the marked medical records in accordance with the MPA. The marked blood test results must be released to the requestor pursuant to section 724.018 of the Transportation Code. The submitted ST-3 accident report must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The district attorney must withhold the CHRI that we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. The marked Texas motor vehicle information that does not relate to the requestor’s client must be withheld under section 552.130 of the Government Code. The remaining submitted information must be release to the requestor.<sup>4</sup>

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

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<sup>3</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>However, because the information being released contains information relating to the requestor’s client that would be excepted from disclosure to the general public to protect her privacy, the district attorney must request another ruling from our office if it receives a future request for this information from an individual other than this requestor, his client, or the client’s authorized representative.

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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/kr1

Ref: ID# 242111

Enc. Submitted documents

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(w/o enclosures)