



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2006

Mr. Darrell G-M Noga  
Fee, Smith, Sharp & Vitullo LLP  
13155 Noel Road, Suite 1000  
Dallas, Texas 75240

OR2006-02279

Dear Mr. Noga:

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# 243661.

The City of Coppell (the "city"), which you represent, received a request for information pertaining to the requestor within a specified time period. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 773.091 of the Health and Safety Code provides as follows:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). The submitted documents do not contain the records of the identity, evaluation, or treatment of a patient by emergency medical services personnel. *See id.* Therefore, the submitted information is not confidential under section 773.091 of the Health and Safety Code, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides the following:

(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). 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).* Further, information that is subject to the MPA also includes information that was obtained from medical records. *See Occ. Code. § 159.002(a), (b), (c); see also Open Records Decision No. 598 (1991).*

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, 159.005.* 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 portion of the submitted information that constitutes medical records and that may only be released in accordance with the MPA. *Open Records Decision No. 598 (1991).*

Section 552.101 also encompasses chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) states that "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." The submitted information does not contain mental health records. *See Health & Safety Code § 611.002.* Therefore, none of the submitted information is confidential under chapter 611 of the Health and Safety Code, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of common law privacy, which protects information that (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. *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 the following types of information are excepted from required public disclosure under common law 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked the information that is confidential under common law privacy and that the city must withhold under section 552.101. But the remaining information is of legitimate concern to the public; therefore, the remaining information is not confidential under common law privacy, and the city may not withhold it under section 552.101 on that ground.

You assert that some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. However, section 552.117 is only applicable to information that a governmental body holds in its capacity as an employer. The submitted information is held by the city's police department in its investigative capacity as a law enforcement entity. Accordingly, section 552.117 is not applicable to the submitted information.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that a motor vehicle operator's, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). However, section 552.130 protects privacy interests, and the requestor thus has a right of access to his information under section 552.023 of the Government Code. The city must withhold the Texas motor vehicle record information of other individuals that we have marked under section 552.130.

Finally, we note that the submitted information includes social security numbers. 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. Because section 552.147 protects individual privacy interests, the requestor has a right to access his own social security number under section 552.023 of the Government Code. *See* Gov't Code

§ 552.023(a); Open Records Decision No. 481 at 4 (1987). The city must, however, withhold the remaining social security numbers we have marked under section 552.147.<sup>1</sup>

To conclude, the marked medical records may only be released in accordance with the MPA. The city must withhold the information marked under section 552.101 in conjunction with common law privacy, section 552.130, and section 552.147 of the Government Code. It must release the remaining information at issue.

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

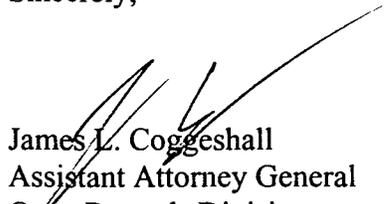
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<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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. 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/er

Ref: ID# 243661

Enc. Submitted documents

c:

  
(w/o enclosures)