



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2006

Ms. Christine Badillo
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P. O. Box 2156
Austin, Texas 78768

OR2006-03179

Dear Ms. Badillo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 245530.

The Bay City Independent School District (the "district"), which you represent, received a request for the complete personnel file of a named district employee, any accident or offense report maintained by the district's police department involving the named employee and a specified motor vehicle incident, and any offense report maintained by the district's police department involving the named employee and any altercation or allegation involving a knife or weapon. Regarding the request for the "complete personnel file" of the named employee, the district has only submitted the employee's employment application for our review. Therefore, we assume the remainder of the requested personnel file has been released to the extent it exists. *See* Gov't Code §§ 552.301, .302. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted documents 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 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). 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 that are governed by the MPA.

Next, we address the district's assertions under section 552.101 of the Government Code, which 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. The district contends that the information submitted as Exhibit 3 is excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. Section 402.083(a) provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Texas Workers' Compensation Commission] except as provided by this subtitle." In Open Records Decision No. 533 (1989), the City of Brownsville received a request for similar information. This office construed the predecessor to section 402.083(a) to apply only to information that the governmental body obtained from the Industrial Accident Board, now the Texas Workers' Compensation Commission (the "commission"). We conclude that information obtained by the district from the commission must be withheld under section 402.083 of the Labor Code in conjunction with section 552.101 of the Government Code. However, information that was provided by the district to the commission does not fall within this provision. Accordingly, documents in the hands of the district that were not obtained from the commission may not be withheld under section 402.083.

Next, we note that employee W-4 forms are excepted from disclosure by section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992). Therefore, the district must withhold the submitted W-4 forms under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 of the Government Code also encompasses the doctrine of common law 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. *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. 540 S.W.2d at 683. This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked the private medical information that the district must withhold under section 552.101.

Section 552.117 of the Government Code may also be applicable to some of the submitted information.¹ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security 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 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the named employee timely elected to keep his personal information confidential, the district must withhold the employee's home address, telephone number, social security number, and any information that reveals whether this employee has family members. The district may not withhold this information under section 552.117 if the employee did not make a timely election to keep the information confidential.

Regardless of a timely election under section 552.024, the named employee's social security number is excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the district must withhold the social security number contained in the submitted information under section 552.147.²

¹The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We 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.

A portion of the remaining submitted information is excepted under section 552.130 of the Government Code, which provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). In addition to the information marked by the district, you must withhold the Texas driver's license information that we have marked under section 552.130.

Finally, we address the district's arguments under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain 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 requested offense report relates to a pending criminal investigation by the district's police department. Based upon this representation, we conclude that the release of the offense report 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). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, we have marked the documents that may only be released in accordance with the MPA. Information obtained by the district from the Texas Workers' Compensation Commission must be withheld under section 402.083 of the Labor Code in conjunction with section 552.101 of the Government Code. However, information that was not so obtained may not be withheld under section 402.083. The submitted W-4 forms must be withheld

under section 552.101 of the Government Code in conjunction with federal law. We have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common law privacy. If the named employee made a timely election under section 552.024 of the Government Code, the employee's home address, phone number, social security number, and family member information must be withheld under section 552.117(a)(1) of the Government Code. The submitted social security number must be withheld under section 552.147 of the Government Code. We have marked the driver's license information that must be withheld under section 552.30 of the Government Code. With the exception of basic information, the information submitted as Exhibit 7 may be withheld under section 552.108(a)(1) of the Government Code. The remaining submitted 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).

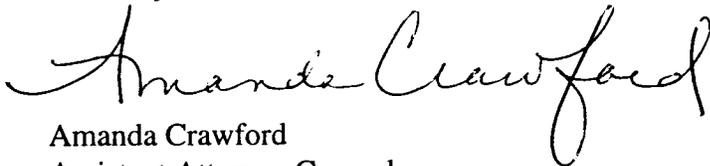
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in black ink and is positioned above the typed name and title.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/krl

Ref: ID# 245530

Enc. Submitted documents

c: Mr. Stephen Dean
Investigative Reporter
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(w/o enclosures)