



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
Transactions Division
P. O. Box 1748
Austin, Texas 78767

OR2006-03413

Dear Ms. Joe:

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# 245657.

The Travis County Sheriff's Office (the "sheriff") received a request for the completed internal affairs cases on a named deputy. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit any arguments in support of your claim under section 552.108. Thus, the sheriff has waived its claim under section 552.108. *See* Gov't Code 552.301(e)(governmental body must provide arguments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision Nos. 522 at 4 (1989) (discretionary exceptions in general), 177 (1977) (governmental body may waive statutory predecessor to section 552.108).

Next, you state that the sheriff intends to withhold the personal information of the named deputy pursuant to the previous determination issued in Open Records Decision No. 670 (2001). In that decision, we determined that a governmental body may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of "peace officer" set forth in article 2.12 of the Texas Code of Criminal Procedure, without the necessity of requesting an attorney general decision as to the applicability of the exception in section 552.117(a)(2) of

the Government Code. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 670 (2001); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a)). Accordingly, the sheriff must withhold the peace officer's home address, home telephone number, social security number, personal cellular phone number, and family member information you have marked pursuant to the previous determination in Open Records Decision No. 670. We have marked additional information in the submitted records that must be withheld under section 552.117(a)(2).

Section 552.101 excepts from 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. You claim that some of the submitted documents are medical records, access to which is governed by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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). Section 159.002(c) 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). However, upon review, we find that none of the submitted information consists of medical records subject to the MPA.

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 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 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 of the Government Code in conjunction with Government Code chapter 411, subchapter F. After reviewing the submitted information, we have marked the CHRI that must be withheld under section 552.101.

The remaining submitted information contains Texas driver's license numbers. 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. In accordance with section 552.130 of the Government Code, the sheriff must withhold the Texas driver's license numbers you have marked.

Finally, we note that the remaining submitted information contains the social security number of a private citizen. 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. Therefore, the sheriff must withhold the social security number of a private citizen under section 552.147.¹

In summary, the sheriff must withhold the peace officer's home address, home telephone number, social security number, personal cellular phone number, and family member information you have marked pursuant to the previous determination in Open Records Decision No. 670. We have marked additional information in the submitted records that must be withheld under section 552.117(a)(2). We have marked the CHRI that must be withheld under section 552.101 in conjunction with chapter 411 of the Government Code. In accordance with section 552.130 of the Government Code, the sheriff must withhold the Texas driver's license numbers you have marked. The sheriff must withhold the social security number of a private citizen under section 552.147. 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

¹We 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.

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).

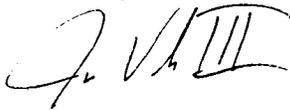
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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*, 342 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 245657

Enc. Submitted documents

c: Ms. Darla Fuller
6205 Magnolia Mound Cove
Austin, Texas 78727
(w/o enclosures)