



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 9, 2006

Ms. Myrna Reingold  
Galveston County  
4127 Shearn Moody Plaza  
123 Rosenberg  
Galveston, Texas 77550-1454

OR2006-04802

Dear Ms. Reingold:

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# 248514.

The Galveston County Community Supervision and Corrections Department (the "department") received a request for information pertaining to three named former department employees, the probation files for two named individuals, specified complaints against department officers regarding alleged sexual harassment or discrimination, and specified department policies regarding sexual assault or harassment. You state you will release some of the information to the requestor. You claim that the submitted information is not subject to the Act or excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.122, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup> Although you initially raised sections 552.102, 552.107, and 552.111 of the Government Code, you have identified no information you seek to withhold under these exceptions. Therefore, we assume you no longer assert these exceptions to disclosure.

<sup>2</sup> We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The Act generally requires the disclosure of information maintained by a "governmental body." See Gov't Code § 552.021. While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." See Gov't Code § 552.003(1) (A), (B). In Open Records Decision No. 646 (1996), this office determined that a community supervision and corrections department is a governmental body for purposes of the Act, and that its administrative records, such as personnel records and other records reflecting day-to-day management decisions, are subject to the Act. *Id.* at 5. On the other hand, we also ruled that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department are not subject to the Act because such records are held on behalf of the judiciary. *Id.*; see Gov't Code § 552.003.

You assert the requested probation files are not subject to disclosure under the Act because a court "continue[s] to be responsible for the conditions of probation and supervision of probationers" and "probation officers continue to act according to the [c]ourt's direction." In this instance, we agree that the submitted probation files are held by the department on behalf of the judiciary and, therefore, are not subject to disclosure under the Act. See *id.* at 2-3; *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ) (in determining whether governmental entity falls within judiciary exception, this office looks to whether governmental entity maintains relevant records as agent of judiciary with regard to judicial, as opposed to administrative, functions). We next address the exceptions to disclosure you raise for the information that is subject to the Act.

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 excepts from disclosure information made confidential by statute. The submitted information includes a W-4 form. Federal tax return information is confidential under section 6103(a) of title 26 of the United States Code. See 26 U.S.C. § 6103(a). The term "return information" includes "the nature, source, or amount of income" of a taxpayer. See 26 U.S.C. § 6103(b)(2). Our office has specifically held that a governmental body must withhold a W-4 form in its entirety under section 6103(a). Open Records Decision No. 600 at 9 (1992). Therefore, the department must withhold the submitted W-4 form under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

Next, we address your claim under section 552.101 in conjunction with the Americans with Disabilities Act of 1990 (the "ADA"). See 42 U.S.C. §§ 12101 *et seq.* Title I of the ADA provides that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. Information obtained in the course of a "fitness for duty examination," conducted to determine whether an employee is still able to perform the essential functions of his or her job, is to be treated as a confidential medical record as well. See 29 C.F.R. § 1630.14(c); Open Records Decision No. 641 (1996). The federal Equal Employment Opportunity Commission (the "EEOC") has determined that

medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." See Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Upon review, we conclude that none of the submitted information is confidential under the ADA, and therefore none of the information may be withheld on that basis under section 552.101 of the Government Code.

Section 552.101 also encompasses the Family Medical Leave Act (the "FMLA"), section 2654 of title 29 of the United States Code. Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states that

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). You inform us that a portion of the submitted information was created for purposes of the FMLA. Having considered your representations and reviewed the information at issue, we find that the information we have marked is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find that none of the release provisions of the FMLA apply to the information. Thus, we conclude that the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with the FMLA.

The submitted information also includes information that is subject to 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 provides in part the following:

Communications 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.

Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the submitted information constituting mental health records that may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

Next, we note that a portion of the submitted information constitutes medical records, access to which is governed by the Medical Practice Act ("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. 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).

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 that may only be released in accordance with the MPA.

The submitted records also include a fingerprint. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

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 department must withhold the CHRI that we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

You also contend that a portion of the submitted information pertaining to the Texas County and District Retirement System (the "retirement system") is confidential under section 845.115 of the Government Code. Section 845.115 provides in relevant part:

- (a) Information contained in records that are in the custody of the retirement system or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the retirement system concerning an individual member, retiree, annuitant, or beneficiary is confidential and is not subject to public disclosure under Chapter 552 [of the Government Code]. The information may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the [director of the retirement system (the "director")] determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual after the director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee after the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the director determines that the individual will have a reasonable opportunity to contest the subpoena.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.

(c) The director may designate other employees of the retirement system to make the necessary determinations under Subsection (a).

Gov't Code § 845.115(a)-(c). You indicate that the retirement system enrollment information concerning one of the former employees at issue consists entirely of retirement system information concerning a member, retiree, annuitant, or beneficiary that is maintained by the department in cooperation with the retirement system. The requestor is not a person to whom disclosure may be permitted under this provision and you do not indicate the department has otherwise been authorized to release the information. *See id.* § 845.115(a). Therefore, the enrollment information at issue is confidential and it must be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

In this instance, part of the submitted information contains allegations of sexual harassment. Because there are no adequate summaries of these allegations or any resulting investigations, you must release this information. However, based on *Ellen*, the department must withhold the identities of the victim and witnesses to the alleged sexual harassment. We have marked the information in the submitted records that must be withheld in accordance with *Ellen*.

In addition, 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. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history); and certain personal choices relating to financial transactions between the individual and the governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). However, information concerning domestic violence generally does not come within the scope of common law privacy. Open Records Decision No. 611 (1992) ("An assault by one family member on another is a crime, not a family matter normally considered private"). This office has also found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope

of public employee privacy is narrow). We have marked portions of the submitted information that must be withheld pursuant to section 552.101 in conjunction with common law privacy. We find, however, that you have failed to establish how any portion of the remaining submitted information is confidential under common law privacy.

Section 552.101 also encompasses constitutional privacy. 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). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find that you have failed to establish how any portion of the remaining submitted information is confidential under constitutional privacy and none of it may be withheld under section 552.101 on that basis.

You also claim a portion of the remaining submitted information is excepted by section 552.108 of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Where an agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates that the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You state some of the requested information pertains to an active criminal prosecution being conducted by the Galveston County District Attorney's Office (the "district attorney's office"). You have submitted an affidavit in which the district attorney's office confirms that the information at issue pertains to an active criminal prosecution being handled by that office and objects to its release. Based upon the representations of the district attorney's

office and our review, we determine that release of the remaining information you seek to withhold under section 552.108 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). Thus, the department may withhold this information, which we have marked, under section 552.108(a)(1).<sup>3</sup>

Section 552.117(a)(1) of the Government Code 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. We note that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See Gov't Code* § 552.117; Open Records Decision No. 622 at 4 (1994) ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. *See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).*" (Emphasis added.)); *see also* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987).

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). The department may only withhold information under section 552.117(a)(1) 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. For those employees who timely elected to keep their personal information confidential, the department must withhold these employees' personal information in the submitted records. The department may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. We have marked the submitted information that may be subject to section 552.117.

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records

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<sup>3</sup> As our ruling on this issue is dispositive, we need not address your arguments under section 552.103 of the Government Code for this information.

Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

You inform us that the submitted information includes an examination created by the department and used by the department to determine whether individuals have the ability and knowledge base to effectively satisfy the demands of certain positions. You also state that the department continues to administer the exam, and thus, releasing the exam questions and their answers would compromise its integrity in the future. Based on your representations and our review of the submitted information, we find that the submitted exam questions constitutes "test items" under section 552.122(b) and that the release of these questions would compromise the effectiveness of future examinations. We also find that the release of the answers to these questions would tend to reveal the questions themselves. Accordingly, we conclude that the department may withhold the submitted questions, along with their corresponding answers, under section 552.122(b) of the Government Code.

The submitted information also includes Texas motor vehicle information. Section 552.130 of the Government Code exempts 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 department must withhold the Texas motor vehicle information we have marked in the submitted information. *See* Gov't Code § 552.130.

The submitted records also contain insurance policy numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The department must, therefore, withhold the policy numbers we have marked under section 552.136.

The remaining information also contains military discharge information. Section 552.140 of the Government Code<sup>4</sup> provides in relevant part:

- (a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

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<sup>4</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).

Gov't Code § 552.140(a). Section 552.140 provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a), (b). You do not indicate when the department first came into possession of the submitted DD-214 forms. Therefore, if these forms came into the possession of the department on or after September 1, 2003, we conclude that the department must withhold this information, which we have marked, under section 552.140. Otherwise, the forms must be released, subject to the markings we have made under section 552.117(a)(1).

The remaining submitted information contains 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. Gov't Code § 552.147. Therefore, the department must withhold the social security numbers contained in the remaining submitted information under section 552.147.<sup>5</sup>

Finally, we note that portions of the submitted information appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary: (1) the submitted probation files are not subject to disclosure under the Act and need not be released; (2) the department must withhold the submitted W-4 form under section 552.101 of the Government Code in conjunction with federal law; (3) we have marked the submitted information that must be withheld under section 552.101 in conjunction with the FMLA; (4) we have marked the submitted information constituting mental health records that may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code; (5) we have marked the submitted information that constitutes medical records that may only be released in accordance with the MPA; (6) the marked fingerprint must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code; (7) we have marked the CHRI that must be withheld under section 552.101 in conjunction with federal law and chapter 411 of the Government Code; (8) we have marked the information that must

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<sup>5</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.

be withheld under section 552.101 in conjunction with section 845.115(a) of the Government Code; (9) we have marked the submitted information that must be withheld under section 552.101 in conjunction with common law privacy; (10) we have marked the information that may be withheld under section 552.108(a)(1) of the Government Code; (11) the department must withhold the employees' personal information we have marked pursuant to section 552.117 of the Government Code if these employees made a timely election under section 552.024 of the Government Code; (12) the submitted exam questions and answers may be withheld under section under section 552.122(b) of the Government Code; (13) the department must withhold the Texas motor vehicle information we have marked under section 552.130 of the Government Code; (14) the department must withhold the policy numbers we have marked under section 552.136 of the Government Code; (15) if the submitted DD-214 forms came into the possession of the department on or after September 1, 2003, the department must withhold this information, which we have marked, under section 552.140 of the government Code; otherwise, the forms must be released, subject to the markings we have made under section 552.117; (16) the department must withhold the social security numbers contained in the remaining submitted information under section 552.147; and (17) the remaining submitted information must be released; however, in releasing information that is protected by copyright, the department must comply with copyright law.

Finally, you request that this office issue a previous determination that would permit the department to withhold from disclosure Texas motor vehicle information under section 552.130 of the Government Code without the need of requesting a ruling from this office about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

Ref: ID# 248514

Enc. Submitted documents

c: Mr. Anthony Griffin  
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