



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2006

Mr. Russell Brown
Manager of Information Services
City of Bellaire Police Department
5110 Jessamine
Bellaire, Texas 77401-4495

OR2006-06251

Dear Mr. Brown:

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# 251613.

The Bellaire Police Department (the "department") received a request for calls for service for motor vehicle accidents which were reported during a specific time period. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your general assertion that the responsive information should be withheld because the requestor will use this information to circumvent the protections provided by section 550.065 of the Transportation Code. Section 550.065(b) 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). You state that the requestor has informed the department that she is seeking the calls for service in order to obtain the information listed in section 550.065(c)(4) and thus gain access to ST-3 accident report forms. It must be noted, however, that a governmental body may not inquire into the purpose for which the requested information will be used. *See* Gov't Code § 552.222(a). But we note that section 552.204 of the Government Code provides that a governmental body is not responsible for a requestor's use of information

released pursuant to the Act. *See id.* § 552.204(a). Additionally, this office will generally not consider the requestor's intent when rendering a open records decision. Therefore, the department may only withhold the responsive information if it is excepted from disclosure under the Act or made confidential by law.

Next, you claim that some of the responsive information is not subject to release pursuant to the Privacy Rule adopted by the United States Department of Health and Human Services, Office for Civil Rights, to implement the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *Id.*; *see* 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov't Code §§ 552.002, .003, .021. We therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. Open Records Decision No. 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the department may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

You raise section 552.108(a) of the Government Code, which 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." 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 id.* § 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you assert that section "552.108 should apply to call for service information and [motor vehicle

accident] (ST-3) information on all cases where investigation is still necessary[,]” you have not stated which information at issue pertains to an ongoing criminal investigation or prosecution. Therefore, we find that you have not adequately demonstrated that section 552.108(a)(1) is applicable to any of the responsive information, and none of it may be withheld on that basis. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You also raise section 58.007 of the Family Code. Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 58.007 which makes certain juvenile law enforcement records confidential. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 is only applicable to records that pertain to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.*; *see also* Fam. Code § 51.03 (defining “delinquent conduct” for purposes of section 58.007). Although you raise section 58.007 of the Family Code for the submitted information, you have failed to explain, and the information does not reflect, how any portion of it constitutes a law enforcement record or file concerning a juvenile suspect or offender. Therefore, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You also claim that the submitted records contain protected medical information. Section 552.101 encompasses information protected by other statutes such as the Medical Practice Act (“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). Upon review, we conclude that none of the submitted information consists of medical records subject to the MPA. Thus, the department may not withhold any portion of the submitted information under the MPA.

You argue that the responsive records contain protected 9-1-1 caller information. Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. These sections only protect the originating addresses and telephone numbers of individuals who actually called 9-1-1. In this instance, we know that the City of Bellaire is located in Harris County, which has a population of more than two million. Accordingly, we will address your claims under section 772.118.

When asserting section 772.118 of the Health and Safety Code, a governmental body must indicate whether or not it is part of a 9-1-1 district subject to that section, and whether or not the originating addresses and telephone numbers of 9-1-1 callers were supplied by a 9-1-1 service supplier to that 9-1-1 district. *See* Gov't Code § 552.301(e). Furthermore, the 9-1-1 callers should be identified in the submitted information. In this instance, you have not provided us with the requisite information. As such, we are forced to rule conditionally on this matter. Therefore, to the extent originating addresses and telephone numbers of 9-1-1 callers were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118 of the Health and Safety Code, the addresses and telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the addresses and telephone numbers were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, they may not be withheld on that basis.

We now turn to your claims under section 552.101 in conjunction with section 411.083 of the Government Code. Criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that 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. We agree that some of the information at issue, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrines of common law privacy 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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.

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)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or 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) (designation of beneficiary of employee's retirement benefits and optional insurance coverage), 545 (1990); information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Upon review, we find that the information we have marked must be withheld under section 552.101 in conjunction with common law privacy. However, we find that you have failed to explain how any portion of the remaining submitted information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Additionally, you have not explained how any portion of the remaining submitted information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. *See* Gov't Code § 301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Thus, no portion of the remaining information may be withheld on these grounds.

Next, you argue that a police officer's personal information is subject to sections 552.117 and 552.1175 of the Government Code. Section 552.117(a)(2) excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175.¹ *See* Gov't Code § 552.117(a)(2). Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). However, the submitted information does not contain any information subject to either section 552.117(a)(2) or section 552.1175. Thus, none of the information may be withheld on these grounds.

¹ Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.12.

The submitted information includes Texas motor vehicle record information that is excepted under section 552.130 of the Government Code. Section 552.130 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(a)(1), (2). In accordance with section 552.130, the department must withhold the marked Texas motor vehicle record information.

We note that the submitted information also contains a social security number.² 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 marked social security number pursuant to section 552.147.

In summary, to the extent originating addresses and telephone numbers of 9-1-1 callers were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118 of the Health and Safety Code, the addresses and telephone numbers must be withheld from disclosure under section 552.101 of the Government Code. However, if the addresses and telephone numbers were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, they must be released. The department must withhold the information we have marked under section 552.101 of the Government Code, as well as the information we have marked under section 552.130 of the Government Code and under section 552.147 of the Government Code. The remaining information must be released.

You request that, in the event any of the responsive information is "found to be open for public disclosure," this office grant the department the authority to disclose all ST-3 accident report forms to any requestor regardless of the confidentiality provisions found in section 550.065 of the Transportation Code. We note, however, that section 550.065 is a statute enacted by the legislature, and this office does not possess the authority to allow any governmental body to bypass a statute's confidentiality provisions. *See generally* Gov't Code § 552.301 (indicating this office's authority when rendering open records decisions). Therefore, the department must continue to follow the legal requirements of the Act and the Transportation Code.

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

² 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).

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(t). 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).

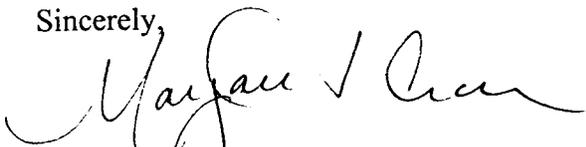
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/eb

Ref: ID# 251613

Enc. Submitted documents

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