



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2006

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

OR2006-06829

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# 252666.

The Bellaire Police Department (the "department") received a request for "Calls for Service to specifically include location and dates for all MVA major and minors wherein the disposition resulted in an accident report being made for the day(s) [of] April 11, 2006." 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 an 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.

You also 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, excepted 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. *See* 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. *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. *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, No. 03-04-00743-CV, 2006 WL 1649003 (Tex. App.—Austin, June 16, 2006, no. pet. h.); Open Records Decision No. 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as a 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 also 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.* §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You argue that any information which pertains to a case “where investigation is still necessary” should be withheld under section 552.108(a)(1). Specifically, you state that “[r]elease of information on FSGI accidents . . . could result in tampering with evidence,” and could “hinder the locating of evidence, interviewing of witnesses and locating of suspects.” We note, however, that you have not indicated whether the submitted information pertains to an ongoing criminal investigation. Therefore, we find that you have not adequately demonstrated that section 552.108(a)(1) is applicable to any of the responsive information, and therefore none of it may be withheld on that basis. *See Gov’t Code § 552.301(e)* (governmental body must provide comments explaining why exceptions raised should apply to information requested).

Section 552.101 of the Government Code 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 58.007(c) of the Family Code applies to juvenile conduct that occurred after September 1, 1997 and provides in relevant part:

(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 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. Section 58.007 applies to delinquent conduct as well as conduct indicating a need for supervision. *See Fam. Code § 51.04(a)* (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child); Open Records Decision No. 628 at 6 (1994) (predecessor statute). Because none of the submitted information involves juvenile conduct committed after September 1, 1997, section 58.007 of the Family Code is not applicable to any of the submitted information.

You also claim that the responsive records contain protected medical information. Section 552.101 also encompasses information protected by 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 responsive information consists of medical records subject to the MPA. Thus, the department may not withhold any portion of the responsive information under the MPA.

You also claim 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.

When asserting section 772.118, 772.218, or 772.318 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 the 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 indicate that the City of Bellaire is part of a 9-1-1 district established under section 772.118 of the Health and Safety Code. However, you have not identified the submitted information, if any, that relates to a 9-1-1 caller. Accordingly, we are forced to rule conditionally on this matter. Therefore, to the extent that the submitted information contains an originating address or telephone number of a 9-1-1 caller that was

supplied by a 9-1-1 service supplier to the 9-1-1 district, any such address or telephone number must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. However, addresses and telephone numbers that were not provided by a 9-1-1 service supplier to the 9-1-1 district are not confidential under section 772.118 and may not be withheld under section 552.101.

Next, we address 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 deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 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 the DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. We note, however, that the definition of CHRI does not include driving record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2)(B). In this instance, the submitted document does not contain any CHRI, and therefore the department may not withhold any of the submitted information under section 552.101 in conjunction with federal law or Government Code chapter 411, subchapter F.

Section 552.101 also encompasses the doctrines of common law 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 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.

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)). After reviewing the submitted information, we find that no portion of it is protected by common law or constitutional privacy.

You claim that a peace officer’s personal information is excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. Section 552.117(a)(2) excepts the home address and telephone number, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under sections 552.024 or 552.1175 of the Government Code. Gov’t Code §§ 552.117(a)(2); *see* Open Records Decision No. 622 (1994). Section 552.1175 also applies to peace officers and provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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, as the submitted information does not contain the home address, telephone number, social security number, or family member information of a peace officer, no portion of the submitted information may be withheld under section 552.117(a)(2) or section 552.1175 of the Government Code.

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[,] a motor vehicle title or registration issued by an agency of this state[, or] a personal identification document[.]” Gov’t Code § 552.130. The submitted document does not contain any information that is excepted from disclosure under section 552.130.

In raising section 552.130, you also cite to “TTC 521 subchapter C.” We note that subchapter C of 521 of the Transportation Code is applicable to the DPS. *See* Transp. Code §§ 521.001, 521.041 *et seq.* Section 521.052 of the Transportation Code states that “[e]xcept as provided by Sections 521.045, 521.046, 521.049(c), 521.050, and 601.022, and by Chapter 730 [of the Transportation Code], the [DPS] may not disclose information from the [DPS]’s files that relates to personal information, as that term is defined by Section 730.003 [of the Transportation Code].” Transp. Code § 521.052. Thus, section 521.052 specifically regulates the disclosure of information by the DPS. As the submitted information is

maintained by the department and not the DPS, section 521.052 is not applicable in this instance.

In summary, an originating address or telephone number of a 9-1-1 caller that was supplied by a 9-1-1 service supplier to the 9-1-1 district must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. However, an address or telephone number that was not provided by a 9-1-1 service supplier to the 9-1-1 district may not be withheld under section 552.101 in conjunction with section 772.118 and must be released. The rest of the submitted information must also 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 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

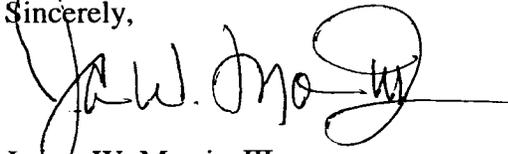
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 252666

Enc: Submitted documents

c: Ms. Adriene Anderson
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