



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 27, 2006

Mr. Nathan C. Barrow  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2006-06831

Dear Mr. Barrow:

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# 252670.

The City of Fort Worth (the "city") received a request for all incident log reports and arrest reports from 2005 involving patrons and employees of the city's Central Library. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code 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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code, which 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,

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<sup>1</sup>To the extent any additional responsive information existed on the date the city received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. See Gov't Code §§552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Although you raise section 58.007 of the Family Code for Exhibit C, you have not explained, and the reports do not reflect, how they constitute law enforcement records or files concerning a juvenile suspect or offender. Accordingly, no portion of Exhibit C may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Next, the submitted information in Exhibit D contains medical records. The Medical Practice Act (“MPA”), chapter 159 of the Occupations Code, governs access to medical record information. Section 159.002 provides in pertinent 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); *see* Open Records Decision No. 598 (1991). The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). After reviewing your arguments and the submitted information, we have marked the medical records in Exhibit D that are subject to the MPA. Absent the applicability of an MPA access provision, the city must withhold this information

pursuant to the MPA. However, we find that you have not demonstrated that any of the remaining records were created by a physician or by someone under the supervision of a physician. *See* Occ. Code § 159.002(b). Thus, we conclude that the city may not withhold any of the remaining information pursuant to the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common law privacy. Common law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, the city must withhold the information we have marked in Exhibit D pursuant to section 552.101 of the Government Code in conjunction with common law privacy.

We note that the remaining information in Exhibit D contains information that may be excepted from disclosure pursuant to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(a)(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). If the individuals in question timely elected to keep their personal information confidential, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city may not withhold this information under

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<sup>2</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.117(a)(1) if the individuals did not make a timely election to keep the information confidential.

Regardless of whether section 552.117 applies, the social security numbers in the submitted information are confidential under section 552.147 of the Government Code which 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 city must withhold the social security numbers contained in the remaining submitted information under section 552.147.

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(a)(1), (2). Thus, the city must withhold the Texas motor vehicle information we have marked in Exhibit E under section 552.130.

In conclusion, the city must withhold the marked medical records under section 552.101 in conjunction with the MPA and the marked information under section 552.101 in conjunction with common law privacy. If the individuals in question timely elected to keep their personal information confidential, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Regardless of whether section 552.117 applies, the city must withhold social security numbers under section 552.147 of the Government Code. The city must withhold the marked motor vehicle information under section 552.130 of the Government Code. 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 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,



Anne Prentice  
Assistant Attorney General  
Open Records Division

AP/sdk

Ref: ID# 252670

Enc. Submitted documents

c: Mr. Matthew Rosen  
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(w/o enclosures)