



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2006

Ms. Beverly West Stephens
Assistant City Attorney
City of San Antonio
P. C. Box 839966
San Antonio, Texas 78283-3966

OR2006-08743

Dear Ms. Stephens:

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# 255897.

The City of San Antonio (the "city") received two requests for information pertaining to two named police officers. You inform us that the city has released some of the requested information. However, you believe that some of the submitted information is not subject to disclosure under the Act, and you claim the remaining submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

¹We note that you have redacted social security numbers in the submitted information pursuant to section 552.147 of the Government Code. See Gov't Code 552.147(b) (authorizing governmental body to redact living person's social security number without the necessity of requesting decision from attorney general under the Act). We also note that you have redacted certain other information in accordance with section 552.117(a)(2) of the Government Code and the previous determination set forth in Open Records Decision No. 670 (2001). See *id.* § 552.117(a)(2); ORD 670 (governmental body may withhold under section 552.117(a)(2) peace officer's home address, home telephone number, personal cellular telephone number, personal pager number, social security number, and information that reveals whether individual has family members without necessity of requesting attorney general decision).

First, you inform us that the submitted information includes a subpoena issued by a grand jury and indicate that some of the documents at issue were obtained pursuant to the subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, to the extent that the information at issue is in the custody of the city as agent of the grand jury, it is not subject to disclosure under the Act. To the extent that this information is not in the custody of the city as an agent of the grand jury, we will address your claimed exceptions for this and the remaining submitted information under the Act.

You also claim that the submitted information includes medical records that are subject to the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The MPA provides in relevant part as follows:

(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). 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. *Id.* §§ 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). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the medical records that are subject to the MPA.

Next, you claim that some of the remaining information at issue is subject to section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. This section reads 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). Upon review, we find that some of the information at issue consists of juvenile law enforcement records relating to allegations that occurred after September 1, 1997. *See id.* § 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). This information is subject to section 58.007, and it does not appear that any of the exceptions in section 58.007 apply. As such, the city must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we find that none of the remaining information at issue consists of juvenile law enforcement records, and thus none of it may be withheld under section 552.101 on that basis.

We note that some of the remaining information is protected by common-law privacy. Common-law privacy is also encompassed by section 552.101 of the Government Code and protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Common-law privacy protects the identifying information of a juvenile offender. Therefore, this information, which we have marked, is protected under common-law privacy and must be withheld under section 552.101 on that basis. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. Further, we note that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Therefore, we have also marked medical information that must be withheld pursuant to section 552.101 and common-law privacy.

Next, you claim that the remaining submitted information contains criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations, which governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations

allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. 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. Upon review, we agree that some of the remaining information, which we have marked, consists of CHRI that must be withheld under section 552.101. However, we find that none of the remaining information at issue consists of CHRI, and therefore none of the remaining information may be withheld on this basis.

Lastly, section 552.130 of the Government Code excepts from disclosure information that relates to a driver’s license or motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130. Upon review, we agree that the city must withhold under section 552.130 the motor vehicle record information you have highlighted. We have also marked some additional information that must be withheld on this basis.

In summary, to the extent that information within the submitted documents is in the custody of the city as an agent of the grand jury, this information is not subject to the Act. The medical records we have marked may only be released in accordance with the MPA. The juvenile law enforcement records we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The juvenile identifying information and private medical information we have marked must be withheld under section 552.101 on the basis of common-law privacy. The CHRI that we have marked is confidential under Government Code chapter 411, subchapter F and must be withheld under section 552.101 on that basis. The Texas motor vehicle record information that you have highlighted and we have marked must be withheld under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/eb

Ref: ID# 255897

Enc. Submitted documents

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