



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2007

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2007-05102

Dear Mr. Rodriguez:

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# 277359.

The El Paso Police Department (the "department") received two requests for two specified incident reports. You state you have released some information to the requestor, but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 that other statutes make confidential. You contend that report 05-307077 is excepted under section 552.101 in conjunction with section 242.127 of the Health and Safety Code, which pertains to investigations of alleged or suspected abuse or neglect in convalescent or nursing homes and related facilities. Section 242.127 provides in pertinent part:

A report, record, or working paper used or developed in an investigation made under [subchapter E of chapter 242] . . . [is] confidential and may be disclosed only for purposes consistent with the rules adopted by the [Texas

Department of Aging and Disability Services (“DADS”)] or the designated agency.

Health & Safety Code § 242.127. The only entities authorized to conduct an investigation under subchapter E of chapter 242 are DADS or the agency designated by a court to be responsible for the protection of a nursing home resident who is the subject of a report of abuse or neglect. *See id.* § 242.126; *see also id.* § 242.121 (defining “designated agency”). However, you do not inform us, nor does it appear, that this report was transferred to or from the DADS, or otherwise used in an investigation made under subchapter E of chapter 242 of the Health and Safety Code. Generally, confidential information may be transferred between governmental bodies without destroying its confidential character. *See* Open Records Decision Nos. 655 (1997), 650 (1996). Accordingly, the department may not withhold report 05-307077 under section 552.101 in conjunction with section 242.127 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. You assert that report 06-173235 is confidential under section 48.101 provides, which provides as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101. The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the Department of Protective and Regulatory Services and certain other state agencies, depending on the circumstances surrounding the incident. *See* Hum. Res. Code §§ 48.151, 48.152, 48.252, 48.301. Thus, records of a police department investigation generally are not subject to section 48.101. Report 06-173235 reflects that it was created by the department pursuant to the department’s own investigation

of an alleged crime. We determine that this report was not used or developed in an investigation made under chapter 48 of the Human Resources Code. Accordingly, we determine that report 06-173235 may not be withheld under section 552.101 in conjunction with section 48.101 of the Human Resources Code.

We note that the submitted information contains fingerprint information.¹ 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). The department does not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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. Accordingly, the department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked pursuant to section 552.101 in conjunction with section 560.003 of the Government Code. The department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released to the requestor.²

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

¹The Office of the Attorney General will raise a mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note that the submitted information contains social security numbers. 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.

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).

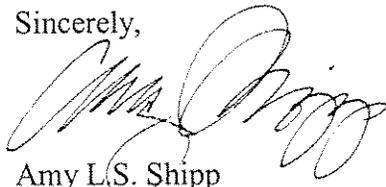
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 277359

Enc. Submitted documents

c: Ms. Sandra Rivera
Paralegal
Law Office of Joseph Abraham, Jr.
717 East San Antonio Street
El Paso, Texas 79901
(w/o enclosures)