



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2007

Ms. Patricia E. Carls
Brown & Carls, L.L.P.
City of Georgetown
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2007-11715

Dear Ms. Carls:

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 #288620.

The Georgetown Police Department (the "department") received a request for a police report, a medical examiners report, and an autopsy report pertaining to the same specified incident. You claim that portions of the submitted police and medical examiner reports are excepted from disclosure under sections 552.101 and 552.118 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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. This office has found that the following types of information are excepted from required public disclosure under 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), 545 (1990). We note, and you acknowledge, that the common-law right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.-Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). You state that you have marked information that "would reveal private information about an identifiable living individual." However, upon review of the submitted police report, we find that none of the information you have marked under common-law privacy constitutes highly intimate or embarrassing information concerning an identifiable living individual. Therefore, none of the information you have marked may be withheld under this exception.

Section 552.101 also encompasses information protected by other statutes. You assert that prescription drug information within the submitted police report should be withheld under section 552.101 in conjunction with the Medical Practices Act (the "MPA"). Section 159.002 of the MPA provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). After reviewing the submitted information, we find that you have failed to demonstrate that the officer obtained the prescription information directly from a medical record. Therefore, we find that none of the submitted information is subject to the MPA. You also raise section 552.118 of the Government Code for the prescription drug information contained within the submitted report. Section 552.118 provides:

Information is excepted from the requirements of Section 552.021 if it is:

(1) information on or derived from an official prescription form filed with the director of the Department of Public Safety under Section 481.075, Health and Safety Code; or

(2) other information collected under Section 481.075 of that code.

Gov't Code § 552.118. You have failed to submit any arguments explaining the applicability of section 552.118 to the prescription drug information. *See* Gov't Code § 552.301(e) (governmental body must provide arguments explaining why exceptions raised should apply to information requested). Thus, none of the information you marked under section 552.118 may be withheld on this basis.

We note that the submitted reports contain information subject to 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. Accordingly, the department must withhold the Texas driver's license number we have marked pursuant to section 552.130 of the Government Code.

The submitted police report also contains bank account numbers, which are subject to section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. This section protects privacy interests, which lapse at death. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Although the information at issue pertains to the deceased's bank accounts, you represent that a living person may have an interest in these account numbers. If a living person has an interest in these account numbers, they must be withheld under section 552.136 of the Government Code. Conversely, if no living person has an interest in these numbers, they must be released to the requestor.

In summary, the department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code. If no living person has an interest in the bank account numbers we have marked under section 552.136 of the Government Code, they must be released to the requestor. If a living person has an interest in the bank account numbers, they must be withheld from disclosure under section 552.136. The remaining information must be released to the requestor.¹

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

¹We note that the submitted information contains a social security number. 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.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 288620

Enc. Submitted documents

c: Mr. Mark Anderson, AIC
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(w/o enclosures)