



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 7, 2008

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2008-00244

Dear Ms. Chang:

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# 299066.

The Houston Police Department (the "department") received a request for all "police, incident and investigative reports" pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you have submitted.

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. Section 552.101 encompasses information protected by other statutes, such as 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. For

¹We note that you did not raise section 552.1175 as an exception to disclosure within ten business days of the date the department received the present request. See Gov't Code §§ 552.301(b), .302. Further, although you assert section 552.1175, the proper exception in this instance is section 552.117 of the Government Code because section 552.117 applies to information the department maintains as the employer of the officers at issue. Because section 552.117 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will address that exception. See *id.*; see also Open Records Decision Nos. 150 at 2 (1977), 319 (1982).

purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 reads 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, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). We have reviewed the submitted information and find it involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, this information is subject to section 58.007. We note, however, that it appears

the requestor is requesting this information on behalf of the mother and the juvenile offender listed in the report. Under section 58.007(e), a parent of the juvenile offender or the juvenile offender himself may inspect law enforcement records concerning that juvenile offender. *Id.* § 58.007(e). However, any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Section 58.007(j) states further that information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 58.007(j)(2). Thus, if the requestor is not requesting the submitted information on behalf of the parent or juvenile offender, then the submitted information must be withheld under section 552.101 in conjunction with section 58.007 of the Family Code. However, if the requestor is requesting the submitted information on behalf of the parent or the juvenile offender, then he has a right to inspect the submitted information, and we will address your remaining arguments against disclosure of that information.

Section 552.101 also encompasses chapter 411 of the Government Code. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations 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 the CHRI it generates. *See 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 in conjunction with chapter 411, subchapter F of the Government Code. We have marked the information in Exhibit 3 that constitutes CHRI and is confidential under section 411.083. Therefore, the information we have marked must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the Medical Practices Act (“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.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records may only be released in accordance with the MPA. *See* ORD 598. Upon review of the submitted information, we find the department may only release the medical records we have marked in Exhibit 3 in accordance with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that a compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Accordingly, we have marked the information in Exhibit 3 that is confidential under common-law privacy and that the department must withhold under section 552.101 of the Government Code. You have not demonstrated, however, how any of the remaining information in Exhibit 3 is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information in Exhibit 3 under section 552.101 in conjunction with common-law privacy.

The submitted documents also contain information that may be excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the current and former home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² We note that section 552.117(a)(2) is applicable to a peace officer's cellular phone and pager number only if the cellular phone or pager service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001). Thus, the department must withhold the home telephone numbers of peace officers that we have marked in Exhibit 3 under section 552.117(a)(2). The department also must withhold the cellular telephone and pager numbers we have marked in Exhibit 3 under section 552.117(a)(2), if the officers at issue, rather than a governmental entity, pay for these services. *See* ORD 670 at 6; *see also* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use).

In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). Upon review, we agree that you must withhold the Texas issued motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.³

You assert that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

³We note, however, that because this requestor has a special right of access to some of the information at issue under section 552.023, in the event the department receives another request for this information from someone other than this requestor, the department must again ask this office for a decision whether the information is subject to public disclosure.

excepted from” required public disclosure under the Act. The department may withhold the marked social security numbers under section 552.147.⁴

In summary, if the requestor is not acting on behalf of the parent or the juvenile offender in the submitted information, then the submitted information must be withheld under section 552.101 in conjunction with section 58.007 of the Family Code. If the requestor is acting on behalf of the parent or juvenile offender, then he must be allowed to inspect the submitted information. In this case, however, the department must withhold: (1) the criminal history record information we have marked in Exhibit 3 under section 552.101 in conjunction with section 411.083; (2) the information we have marked in Exhibit 3 under section 552.101 in conjunction with common-law privacy; and (3) the Texas motor vehicle record information it has marked, in addition to the information we have marked, under section 552.130. The department may only release the marked medical records in Exhibit 3 in accordance with the MPA. The department must withhold the home telephone numbers of licensed peace officers, which we have marked in Exhibit 3, under section 552.117(a)(2). If the officers themselves pay for these services, then the department must also withhold the pager and cellular telephone numbers we have marked in Exhibit 3 under section 552.117(a)(2). Finally, the department may withhold the marked social security numbers under section 552.147. The requestor must be allowed to inspect the remaining information, if he is requesting this information on behalf of the parent or juvenile offender.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

⁴We note that 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.

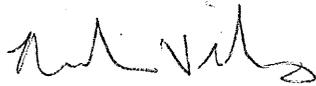
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 299066

Enc. Submitted documents

c: Mr. Gary A. Roth
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(w/o enclosures)