



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 21, 2009

Ms. Catherine Howard  
Assistant Criminal District Attorney  
Hidalgo County District Attorney's Office  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2009-05248

Dear Ms. Howard:

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# 340720.

The La Joya Independent School District and the La Joya Independent School District Police Department (collectively, the "district"), which you represent, received a request for information related to a specified incident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We also understand you to claim section 552.101 of the Government Code as an exception to disclosure in conjunction with section 58.007 of the Family Code. We have considered the exceptions you claim and reviewed the submitted representative sample of 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. 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

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

that occurred on or after September 1, 1997 are confidential under section 58.007. For 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 that the requestor is the attorney for the parents of one of the juvenile suspects listed in the submitted report. Accordingly, information pertaining to the juvenile offender who is the child of the requestor's clients may not be withheld under section 552.101 of the Government Code on that ground. *See 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).

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 district may only release the medical records we have marked in accordance with the MPA.

You contend that the remaining information is excepted from disclosure under section 552.108 of the Government Code, which provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

... or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(2), (a)(4), (b)(2)-(3). Section 552.108 protects certain specific types of law enforcement information. Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. *Id.* § 552.108(a)(2), (b)(2). Sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state.

*Id.* § 552.108(a)(4), (b)(3). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

A governmental body claiming subsections 552.108(a)(2) and 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information relates to a “matter [that] has not been presented [to] the Hidalgo County Criminal District Attorney’s Office for prosecution; therefore, there is no conviction/adjudication or deferred adjudication.” However, you do not assert that the case has concluded. Therefore, we find that you have failed to demonstrate the applicability of subsection 552.108(a)(2) or subsection 552.108(b)(2) to the submitted information, and it may not be withheld on this basis. *See Gov’t Code* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Subsections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. In *Curry v. Walker*, the Texas Supreme Court held that a district attorney’s decision as to what to include in a case file necessarily reveals the attorney’s thought processes concerning the prosecution of the case. *See Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). Accordingly, the court found that the district attorney’s entire case file was protected by the attorney work product privilege. *Id.* at 380-81.

We note that the information at issue consists of law enforcement records. No portion of the information at issue was created by an attorney. Thus, you have not shown that this information was “prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation.” *Gov’t Code* § 552.108(a)(4)(A), (b)(3)(A). Likewise, you have not demonstrated that the information “represents the mental impressions or legal reasoning of an attorney representing the state.” *Id.* § 552.108(a)(4)(B), (b)(3)(B). Therefore, as you have not established that the information at issue falls within the scope of either subsection 552.108(a)(4) or subsection 552.108(b)(3), we conclude that the district may not withhold any of the remaining information under section 552.108 of the Government Code.

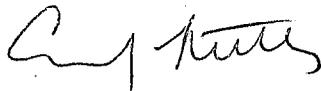
In summary, the requestor must be allowed to inspect the submitted information; however, (1) the district may only release the medical records we have marked in accordance with the MPA, and (2) any personally identifiable information concerning juvenile suspects,

offenders, victims, or witnesses other than the juvenile offender who is the child of the requestor's clients must be redacted.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 340720

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note 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.