



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2009

Mr. Art Pertile, III  
Olson & Olson, LLP  
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2727 Allen Parkway  
Houston, Texas 77019

OR2009-09523

Dear Mr. Pertile:

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# 348683 (City of Stafford #COS 09-002 and 09-003).

The Stafford Police Department (the "department"), which you represent, received two requests from the same requestor for the personnel file of a named officer and a copy of 9-1-1 tapes and transcripts pertaining to a specified incident. You state you have released some of the requested information to the requestor with certain information redacted under section 552.117(a)(2) in accordance with Open Records Decision No. 670 (2001). *See* ORD 670 at 6 (home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers may be withheld without necessity of requesting attorney general decision under section 552.117). You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you state that some of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-03558 (2009). In Open Records Letter No. 2009-03558, we ruled that the

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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.

department may withhold the 9-1-1 recording pertaining to a specified incident under section 552.108(a)(1) of the Government Code. The present request seeks the 9-1-1 recording pertaining to the same specified incident. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous determination and withhold the 9-1-1 call in accordance with Open Records Letter No. 2009-03558. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 encompasses the Medical Practice Act (the "MPA"), subtitle B of titlen 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends 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). We have further found that when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Medical records may be released only as provided under the MPA. *Id.* Upon review, we have marked the portion of the remaining information that constitutes medical records and that may only be released in accordance with the MPA. However, no portion of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician for the

purposes of the MPA. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

We note that the remaining information contains fingerprints. 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), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

The remaining information also contains an L-3 (Declaration of Psychological and Emotional Health) form, which is required by the Texas Commission on Law Enforcement Officer Standards and Education (the "commission"). Section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code, provides in relevant part as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). The department must withhold the L-3 form we have marked under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

The remaining information contains a document that is subject to Chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by

a mental health professional. Section 611.002(a) states that “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Health & Safety Code § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the document that constitutes mental health records, and that may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 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, but 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.* §§ 411.090-411.127. 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. Upon review, we find that the information we have marked constitutes CHRI and must be withheld under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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 personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms

allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We have marked the information that is confidential under common-law privacy and that the department must withhold under section 552.101. But the remaining information is not highly intimate or embarrassing or of legitimate public interest; therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it on that basis.

Next, we note that portions of the remaining information are excepted from disclosure under section 552.117(a)(2), which excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). Accordingly, the department must withhold the information we have marked in the remaining information under section 552.117(a)(2).

You assert that a photograph of the officer at issue is excepted from disclosure under section 552.119 of the Government Code. Section 552.119 provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. In this instance, you have demonstrated that release of the peace officer's photograph would endanger the life or physical safety of the officer. Furthermore, none of the exceptions to section 552.119 appear to apply. Therefore, the department must

withhold the submitted photograph depicting a peace officer that we have marked under section 552.119 of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130.

Section 552.136(b) provides 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." The department must withhold the account number we have marked under section 552.136.

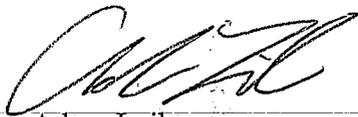
Section 552.137 of the Government Code requires a governmental body to withhold the e-mail addresses of members of the general public, unless the individuals to whom the e-mail addresses belong have affirmatively consented to its public disclosure. *See Id.* § 552.137 (b). You do not inform us that the owners of the e-mail addresses have affirmatively consented to release. Therefore, the department must withhold the e-mail addresses we have marked under section 552.137.

In summary, the department may continue to rely on a previous determination and withhold the requested 9-1-1 recording in accordance with Open Records Letter No. 2009-03558. We have marked the portion of the remaining information that constitutes medical records and that may only be released in accordance with the MPA. The department must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. The department must withhold the L-3 form we have marked under section 552.101 in conjunction with section 1701.306 of the Occupations Code. The mental health records, which we have marked, may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The department must withhold the information we have marked as CHRI under section 552.101 in conjunction with section 411.083 of the Government Code. We have marked the information that is confidential under common-law privacy and that the department must withhold under section 552.101. The department must withhold the information we have marked under section 552.117(a)(2). The department must withhold the submitted photograph depicting a peace officer that we have marked under section 552.119 of the Government Code. Lastly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130, the account number we have marked under section 552.136, and the e-mail addresses we have marked under section 552.137. The remaining information must be released to the requestor.

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/eeg

Ref: ID# 348683

Enc. Submitted documents

c: Requestor  
(w/o enclosures)