



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2009

Mr. Jonathan T. Khory
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Austin, Texas 78750

Mr. Cary L. Bovey
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2251 Double Creek Drive, Suite 204
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OR2009-10160

Dear Mr. Khory and Mr. Bovey:

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# 349990.

The City of Brenham (the "city"), which you both represent, received two requests from the same requestor for information pertaining to a specified death. You claim that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information contains medical records and information taken from medical records. 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 protected by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title

3 of the Occupations Code.¹ *See* Occ. Code § 151.001. 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). 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). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. After the death of a patient, medical records may be released only on the signed written consent of the deceased individual's personal representative. *See id.* § 159.005(a)(5). Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). The submitted information pertains to a deceased individual. We have marked medical records and information taken from medical records that the city must withhold under the MPA, unless the city receives written consent for release of those records that complies with section 159.005(a)(5) of the MPA.

We note that some of the remaining information contains information that is confidential under common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate' or

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

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 personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. See Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we conclude that the personal financial information we have marked is intimate and embarrassing and of no legitimate public interest. Accordingly, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.130 of the Government Code for the information you have marked in the submitted information. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2), see Transp. Code § 501.002(14)(B) (motor vehicle means a trailer or semitrailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds). We note that section 552.130 protects the privacy interests of individuals, and because the right of privacy is purely personal, it lapses upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Thus, the deceased individual's Texas driver's license number may not be withheld under section 552.130. However, the submitted information contains Texas motor vehicle record information that does not pertain solely to the deceased individual. Upon review, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. In addition, photograph numbers 7, 8, 43, and 44 contain Texas motor vehicle information that must be withheld under section 552.130. You inform us that the city does not have the technical capability to redact the Texas motor vehicle information from the photographs. Therefore, we find that photograph numbers 7, 8, 43, and 44 must be withheld in their entireties under section 552.130 of the Government Code. After reviewing the remaining information you marked under section 552.130, we find that it does not consist of information protected by section 552.130 of the Government Code. Thus, the remaining information you have marked may not be withheld based on section 552.130.

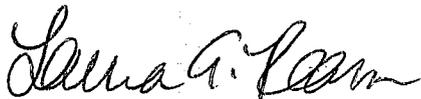
In summary, the medical records and information taken from the medical records, which we have marked, may only be released in accordance with the MPA. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked, as well

as photograph numbers 7, 8, 43, and 44 in their entireties, under section 552.130 of the Government Code. 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, 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/eeg

Ref: ID# 349990

Enc. Submitted documents

c: Requestor
(w/o enclosures)