



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2009-12042

Dear Mr. Phillips:

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# 354591 (Fort Worth Request No. 4208-09).

The City of Fort Worth (the "city") received a request for a specified offense report and any related information. You state you have redacted Texas motor vehicle record information pursuant to the previous determinations issued in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006).¹ You also state that social security numbers have been redacted in accordance with section 552.147(b) of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information consists of a grand jury subpoena and records obtained pursuant to that grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the

¹See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under section 552.301(a)).

²Section 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.

constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decision Nos. 513 (1988), 411 (1984), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, to the extent that the information at issue is held by the city as an agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act. To the extent the submitted information does not consist of records of the judiciary, we will address your arguments against disclosure.

Next, we note that the submitted information contains information covered by the Medical Practice Act ("MPA").³ Section 552.101 of the Government Code exempts 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 made confidential by other statutes, including the MPA. Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in relevant 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), (b), (c). This office has concluded that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on receipt of the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, 159.005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See* Occ. Code § 159.002(c); Open Records Decision No. 565 at 7 (1990). We find that portions of the submitted information consist of medical records that fall within the scope of the MPA. Thus, the city must withhold this

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information, which we have marked, under section 159.002 of the Occupations Code, unless it receives the required written consent for release of the information under sections 159.004 and 159.005 of the Occupations Code.

Section 552.101 of the Government Code also incorporates 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. Information that either identifies or tends to identify a victim of sexual assault must be withheld under common-law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). However, in instances of sexual assault, where it is demonstrated that the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. Here, although you question whether the submitted information must be withheld in its entirety, you have not demonstrated, nor does the report reflect, that this is a situation in which the entirety of the information must be withheld on the basis of common-law privacy. Accordingly, the city must withhold the victim's identifying information you have highlighted within the submitted documents pursuant to section 552.101 in conjunction with common-law privacy. We have marked additional information which must be withheld under common-law privacy. Furthermore, we note the victim is identified within minute one of the recording. This information must also be withheld under section 552.101 in conjunction with common-law privacy. In the event the city does not have the technological capacity to redact the victim's identity from the submitted audio recording, the city must withhold the audio recording in its entirety.

Section 552.136(b) states "[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. Accordingly, the city must withhold the partial credit card numbers you have highlighted under section 552.136 of the Government Code.

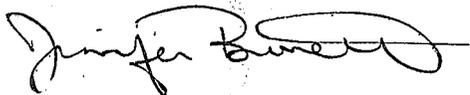
Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purposes of communicating electronically with a governmental body," unless the member of the public consents to its release, or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137 (a)-(c). You have highlighted e-mail addresses in the remaining information that are not a type specifically excluded by subsection (c). Accordingly, the city must withhold the highlighted e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.

In summary, to the extent the submitted information is held by the city as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. The information we have marked under section 552.101 of the Government Code in conjunction with the MPA may only be released in accordance with the MPA. The city must withhold the information you have highlighted and the information we have marked, including the confidential information within minute one of the audio recording, under section 552.101 of the Government Code in conjunction with common-law privacy. If the city lacks the technological capacity to redact from the audio recording the type of information we have indicated, the city must withhold the audio recording in its entirety. The city must withhold the partial credit card numbers you have highlighted under section 552.136 of the Government Code. The city must also withhold the information you have highlighted under section 552.137 of the Government Code. The remaining information must be released.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 354591

Enc. Submitted documents

c: Requestor
(w/o enclosures)