



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2009

Mr. Robert J. Perez
Shelton & Valadez, P.C.
Attorney for City of Hondo
600 Navarro, Suite 500
San Antonio, Texas 78205

OR2009-13455

Dear Mr. Perez:

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# 356331.

The Hondo Police Department (the "department"), which you represent, received a request for information pertaining to the termination of the requestor's client. You state you will redact social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides for required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation made of, for, or by the department. Section 552.103 is not other law that makes information expressly confidential for the purposes of

¹We 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. See Gov't Code § 552.147(b).

section 552.022(a)(1). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, the department may not withhold the submitted information under section 552.103. However, because sections 552.101 and 552.130 of the Government Code constitute “other law” for purposes of section 552.022(a)(1), we will address the applicability of these sections to the submitted information.²

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 of the Government Code encompasses 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. The relevant language of section 58.007(c) 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). We have reviewed the submitted information and find a portion of it involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. See *id.* § 51.03(a) (defining “juvenile delinquent conduct” for the purposes of section 58.007). Thus, the information we have marked is subject to section 58.007(c). It does not appear that any of the exceptions in

²The Office of the Attorney General will raise a mandatory exception such as section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 58.007 apply. Accordingly, we conclude the information we have marked is confidential pursuant to section 58.007 of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. You assert the report in tab 3 was created by EMS personnel. Based on your representation and our review, we conclude the report in tab 3 is confidential under section 773.091. Thus, except for the information specified in section 773.091(g), which must be released, the department must withhold the EMS records in tab 3 pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

We note that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which 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). We have marked Texas motor vehicle record information that must be withheld under section 552.130 of the Government Code.

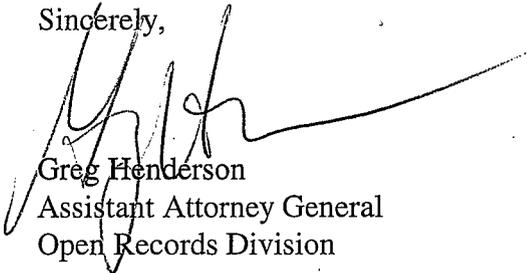
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of the information specified in section 773.091(g), the department must withhold the EMS records in tab 3 pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The department

must also withhold the information we have marked under section 552.130 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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#356331

Enc. Submitted documents

c: Requestor
(w/o enclosures)