



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 23, 2009

Mr. John Thatcher
Wolfe, Tidwell & McCoy, LLP
For City of Anna
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2009-16619

Dear Mr. Thatcher:

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# 362077(Wolfe Tidwell file no. C03029PIR20090901-01).

The Anna Police Department (the "department"), which you represent, received a request for information pertaining to a specified accident. You state some of the requested information will be released with redactions made pursuant to section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a CRB-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states, except as provided by subsection (c), CRB-3 accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date

¹Section 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). However, the requestor has a right to his client's own social security number. *See id.* § 552.023.

of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Here, the requestor has provided the department with all three of the required pieces of information. Thus, the department must release the marked CRB-3 accident report to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. You have marked information in this report to be withheld under section 552.101 in conjunction with common-law privacy. However, because the requestor in this instance has a statutory right of access to the information at issue, the department may not withhold any of this information from the requestor on that basis. *Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common law principle). Further, although you have marked portions of this information under sections 552.130 and 552.136 of the Government Code, the exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Thus, the department must release the CRB-3 report in its entirety to the requestor.

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 exception encompasses information protected by statutes, and encompasses the Medical Practice Act (the “MPA”), subtitle B of title 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). This office has concluded 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). We have also found when a file is created as the result of a hospital stay, “all the documents relating to diagnosis and treatment would 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). Further, information that is subject to the MPA also includes information obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991).

You assert the information at issue consists of medical records and information taken directly from medical records. We agree portions of this information, which we have marked, consist of medical records subject to the MPA. As the attorney representing the individual who is the subject of some of these records, the requestor may have a right of access to portions of the medical records at issue. Medical records must be released on receipt of a signed, written consent from the patient, provided 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. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). The medical records we have marked must only be released in accordance with the MPA. However, you have not demonstrated how the remaining information you have marked consists of medical records or information obtained directly from medical records; therefore, none of this information may be withheld under section 552.101 on that basis.

Next, we will address your claim under chapter 411 of the Government Code, which is also encompassed by section 552.101. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center is confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). Any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Any CHRI obtained from the Department of Public Safety ("DPS") or another criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See id.* § 411.082 (2)(B). Upon review, we agree portions of the remaining information consist of CHRI subject to chapter 411. The department must withhold this information, which we have marked, under section 552.101 in conjunction with chapter 411.

Next, you raise chapter 730 of the Transportation Code. Section 552.101 also encompasses section 730.004 of the Transportation Code, which provides:

Notwithstanding any other provisions of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Section 730.003 provides, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

Id. § 730.003(1), (4). Section 730.004 only applies to an "agency" that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have failed to demonstrate the department compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to the department. Accordingly, no part of the remaining information may be withheld under section 552.101 in conjunction with section 730.004 of the Transportation Code. *See Open Records Decision No. 478 at 2 (1987)* (language of confidentiality statute controls scope of protection).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See Open Records Decision*

No. 545 (1990). However, we note an individual's name, home address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Upon review, we find the information we have marked constitutes personal financial information. Further, we find there is not a legitimate public interest in the release of this information. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). We have marked the information generally subject to section 552.130. We note, however, this exception protects personal privacy. *See id.* In this instance, it appears some of the marked Texas motor vehicle record information belongs to the requestor's client. To the extent any portion of the marked information belongs to the requestor's client, the requestor has a right of access to such information under section 552.023 of the Government Code, and the information may not be withheld under section 552.130. *Id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). To the extent the marked information does not pertain to the requestor's client, it must be withheld under section 552.130 of the Government Code.

In summary, the department must release the marked CRB-3 accident report to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. The medical records we marked must only be released in accordance with the release provisions of the MPA. The department must withhold the CHRI we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and the information we marked under section 552.101 in conjunction with common-law privacy. To the extent the Texas motor vehicle record information we marked does not belong to the requestor's client, the department must withhold it under section 552.130 of the Government Code. The remaining information must be released to this requestor.²

²Should the department receive another request for these same records from a person who would not have a right of access to the requestor's client's private information, the department should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 362077

Enc. Submitted documents

c: Requestor
(w/o enclosures)