



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2009

Ms. Leila Feldman  
Assistant General Counsel  
Houston Community College  
3100 Main Street  
Houston, Texas 77002

OR2009-18066

Dear Ms. Feldman:

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# 365597.

Houston Community College (the "college") received a request for the personnel files of five named employees of the college police department.<sup>1</sup> You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup> We note that the requestor has agreed to the redaction of the employees' social security numbers, home addresses, and home telephone numbers.

<sup>2</sup> Although you also cite sections 552.102, 552.103, 552.108, 552.1175, and 552.1425 of the Government Code in your initial brief to this office, you have not submitted any arguments explaining how these sections apply to the submitted information. Thus, you have waived your claims under section 552.103 and section 552.108, and we have no basis for finding any of the submitted information confidential under section 552.102, section 552.1175, or section 552.1425. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

<sup>3</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.

Initially, we note that you have redacted names, ages, and dates of birth from the submitted documents that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). As we are able in this instance to ascertain the nature of the information you have redacted, we will determine whether it is excepted from public disclosure. In the future, the college must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.*

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 encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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 the Department of Public Safety ("DPS") maintains, except 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; however, 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-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The term CHRI does not include driving record information maintained by the DPS. Gov't Code § 411.082(2)(B). Furthermore, we note that an individual's current involvement in the criminal justice system, including active warrant information, does not constitute CHRI. Upon review, we agree a portion of the submitted information in Exhibit 1 constitutes CHRI. The college must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with section 411.083 of the Government Code. However, none of the remaining information constitutes CHRI for the purposes of chapter 411 of the Government Code. Thus, none of the remaining information in Exhibit 1 may be withheld on that basis.

Section 552.101 also encompasses section 611.002 of the Health and Safety Code, which governs the public availability of mental health records. Section 611.002 provides in part:

(a) Communications 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.

Health & Safety Code § 611.002(a); *see id.* § 611.001 (defining “patient” and “professional”). A portion of the information in Exhibit 3, which we have marked, consists of mental health records that the college must withhold under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). 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). Medical records must be released upon the patient’s signed, written consent, 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. Occ. Code §§ 159.004, .005. You claim the information in Exhibit 3 is protected under the MPA. We have marked the portion of Exhibit 3 that constitutes medical records and that may only be released in accordance with the MPA. However, we find you have failed to demonstrate how the remaining information in Exhibit 3 constitutes medical records for purposes of the MPA.

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which provides in relevant part:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] 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). This statute makes confidential the information contained in an L-2 Declaration of Medical Condition form and an L-3 Declaration of Psychological and Emotional Health form. You seek to withhold information in Exhibit 3 pursuant to section 1701.306. We note, however, section 1701.306 applies only to the declaration forms themselves. As none of the information in Exhibit 3 constitutes either an L-2 or an L-3 declaration form, none of the information may be withheld pursuant to section 1701.306.

You state the college has withheld police identification numbers and dates of birth of the named employees, all of whom are peace officers, from the remaining information pursuant to section 552.117(a)(2) of the Government Code.<sup>4</sup> We note section 552.117 does not encompass an employee's date of birth or identification number, and this information may not be withheld on that basis.

Finally, you raise section 552.130 of the Government Code for the information in Exhibit 2. Section 552.130 excepts from disclosure "information [that] relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state [.]"- Gov't Code § 552.130. We have

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<sup>4</sup> The previous determination issued in Open Records Decision No. 670 (2001) authorizes a governmental body to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.

marked the Texas motor vehicle record information in Exhibit 2 that the college must withhold under section 552.130 of the Government Code.<sup>5</sup>

In summary, the college must withhold the CHRI we have marked in Exhibit 1 under section 552.101 in conjunction with section 411.083 of the Government Code. The college must withhold the mental health records we have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The college may only release the medical records we have marked in Exhibit 3 in accordance with the MPA. The college must withhold the Texas motor vehicle information we have marked in Exhibit 2 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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 365597

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup> We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.