



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2010

Mr. Dan Meador
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2010-19397

Dear Mr. Meador:

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# 403285 (DSHS File No. 018044/2011).

The Texas Department of State Health Services (the "department") received a request for 1) a summary of the activities a specified complaint alleges, 2) a "hard copy" of a specified website maintained by a named individual, 3) an explanation of acronyms used on the website, 4) a "hard copy" of a specified advertisement, and 5) the rules and regulations the complainant contends were violated by the named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

As a preliminary matter, the requestor argues that the department failed to comply with the procedural requirements prescribed by section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply no later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney

general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The requestor states that he faxed his request on September 22, 2010. However, his request acknowledges that it was not sent to the department's public information officer, but to a named investigator. The Act requires that a request for public information sent by facsimile be submitted to the officer for public information or that person's designee. *See id.* § 552.301(c) (procedural deadlines under section 552.301 for requests sent by fax triggered when officer for public information receives request). In addition, the requestor sent his request via certified mail. The department states that it received this request on September 29, 2010. The department also received an additional request from the requestor on September 29, 2010. Accordingly, the department's ten-day deadline was October 13, 2010. The department timely submitted its request for an open records decision on October 11, 2010, with a copy of the request received by the public information officer. The department's October 11, 2010 letter also contains a notation the requestor was copied on that date. Therefore, we conclude the department complied with the procedural requirements of section 552.301, and we will consider the department's arguments under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. 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 (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 that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083.¹

Section 411.122 of the Government Code authorizes the department's professional licensing boards to obtain CHRI from DPS; however, the department may not release CHRI except as provided by chapter 411. *See id.* §§ 411.083, .084, .122. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, 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 Chapter 411 of the Government Code. Upon review, we agree the department must withhold the CHRI obtained from DPS you have marked

¹Although you assert the CHRI at issue is confidential under section 411.084 of the Government Code, the proper exception to claim is section 411.083 of the Government Code.

under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code 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) 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 established. *Id.* at 681-82. The type of information considered highly intimate or 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 also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Some of the information you have marked under section 552.101 in conjunction with common-law privacy relates to the requestor's client. Pursuant to section 552.023 of the Government Code, the requestor has a special right of access to private information pertaining to his client and the department may not withhold such information from him under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). We have marked, however, medical information pertaining to another individual that is highly intimate or embarrassing and of no legitimate public interest; thus, the department must withhold this marked information under section 552.101 in conjunction with common-law privacy. The remaining information either is not highly intimate or embarrassing or is of legitimate public interest; therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it on that ground.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose 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). *See id.* § 552.137(a)-(c). The e-mail address at issue does not appear to be of types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail address it has marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure.

You have also marked portions of the report that you believe should be withheld under sections 552.130 and 552.147 of the Government Code. *See* Gov't Code §§ 552.130, .147.

These sections protect a person's Texas motor vehicle information and social security number. However, the requestor is the attorney representing the individual whose information is at issue. As discussed above, section 552.023 of the Government Code gives a person's authorized representative a special right of access to information that is otherwise excepted from public disclosure under laws intended to protect that person's privacy interests. *See id.* § 552.023. Thus, in this case the requestor has a special right of access to his client's information, and the department may not withhold any of the information marked under sections 552.130 and 552.147.²

In summary, the department must withhold the CHRI obtained from DPS you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the marked e-mail address under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.³ The remaining information must be released.⁴

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,

² 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. In addition, this office 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, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. As noted, however, the requestor in this situation has a special right of access to this information. However, if the department receives another request for this information from an individual other than one with a right of access under section 552.023, the department is authorized to withhold the social security number and Texas driver's license number at issue without the necessity of requesting an attorney general decision.

³We 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 e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the requestor has a special right of access to the information being released. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/vb

Ref: ID# 403285

Enc. Submitted documents

c: Requestor
(w/o enclosures)