



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

Mr. David Daugherty
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2011-01603

Dear Mr. Ryan:

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# 407601 (C.A. File No. 10GEN2656).

The Harris County Constable, Precinct 5 (the "constable") received a request for internal affairs files related to six named officers. You state some of the requested information is being released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information made confidential by other statutes. The relevant language of section 58.007(c) of the Family Code 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); *see id.* § 51.03(a)–(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, the submitted police reports and booking sheets consist of law enforcement records involving a juvenile suspect. The constable must therefore withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, the remaining submitted information consists of an internal affairs investigation. The internal affairs investigation records do not consist of juvenile law enforcement records for purposes of section 58.007. Therefore, none of the remaining submitted information is confidential under section 58.007(c) of the Family Code, and the constable may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses information made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See Occ. Code §§ 151.001-165.160.* Section 159.002 of the MPA provides, in relevant in part:

(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(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* 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).* You claim some of the remaining information is subject to the MPA. Upon review, we find you have failed to demonstrate how any of the information at issue constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the constable

may not withhold any portion of the remaining information under section 552.101 in conjunction with the MPA.

Section 552.101 also encompasses the common-law right of privacy. Common-law privacy 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. *See 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 determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). Upon review, we determine the identifying information of the juvenile suspect, the juvenile's hand-written statements, and photographs of the juvenile suspect in the remaining submitted information, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. We have also marked information pertaining to another individual that is highly intimate or embarrassing and of no legitimate public interest. Therefore, the constable must withhold the information we have marked in the remaining submitted information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5; *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985).

This office has applied constitutional privacy to protect certain information related to incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). This office has held those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure," and this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185 at 2; *see State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976). The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates. In that decision, our office found the public's right to obtain an inmate's correspondence list is not sufficient to overcome the first amendment right of the inmate's correspondents to

maintain communication with him free of the threat of public exposure.” ORD 185 at 2. Implicit in this holding is the fact that an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORDs 430, 428. The rights of those individuals to anonymity was found to outweigh the public’s interest in this information. ORD 185; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Accordingly, the constable must withhold the inmate visitor information we marked under section 552.101 of the Government Code in conjunction with constitutional privacy.

You claim the remaining information includes Texas motor vehicle record information. Section 552.130 of the Government Code provides 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). Upon review, we find the constable must withhold the Texas driver’s license numbers we have marked in the remaining information under section 552.130 of the Government Code.¹

You also claim the remaining information includes social security numbers. Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). Accordingly, the constable may withhold the social security numbers we have marked under section 552.147 of the Government Code.²

In summary, the constable must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The constable must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The constable must withhold the inmate visitor information we marked under section 552.101 of the Government Code in conjunction with constitutional privacy. The constable must withhold the Texas driver’s license numbers we have marked in the remaining information under section 552.130 of the Government Code. The constable may withhold the social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released.

¹We note 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 Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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. *See* Gov’t Code § 552.147(b).

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/vb

Ref: ID# 407601

Enc. Submitted documents

c: Requestor
(w/o enclosures)