



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2011

Ms. Twanda Somerville
Records Management Coordinator
City of Harker Heights
305 Miller's Crossing
Harker Heights, Texas 76548

OR2011-03011

Dear Ms. Somerville:

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# 410586.

The City of Harker Heights (the "city") received a request for nineteen categories of information pertaining to a named city police department officer. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information submitted for our review is not responsive to the request. The requestor has specifically excluded from her request home addresses, telephone numbers, social security numbers, dates of birth, driver's license numbers, and license plate information. Further, you have submitted information that does not pertain to the named city police department officer. Accordingly, this information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

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 other statutes make confidential,

such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001-165.160. Section 159.002 of the MPA provides, 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 that is 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). Upon review, we find portions of the submitted information constitute confidential medical records. Thus, the information we have marked may only be released in accordance with the MPA.¹ ORD 598.

You claim the remaining information is excepted from disclosure on the basis of common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy 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. *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 elements of the test must be established. *See id.* at 681-82. This office has 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). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage,

¹As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

mortgage payments, assets, bills, and credit history). However, where a transaction is funded in part by a governmental body, it involves the employee in a transaction with the governmental body and the basic facts about that transaction are not private under section 552.101. ORD 600 at 9 (basic facts of group insurance provided by governmental body not protected by common-law privacy).

Upon review, we find that some of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We agree some of the remaining information at issue also contains information about a city employee which may be considered highly intimate or embarrassing. However, because this information pertains to workers' compensation claims and insurance provided by the city, we find there is a legitimate public interest in it. *See* Open Records Decision Nos. 545 at 4 (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 423 at 2 (1984) (scope of public employee privacy is narrow). Further, none of the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining information is confidential under section 552.101, and it may not be withheld on that basis.

You claim the remaining information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). Upon review, none of the remaining information is excepted under section 552.102(a), and it may not be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.² *Id.* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information we have marked pertaining to the named city police department officer under section 552.117(a)(2) of the Government Code.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the city must withhold the information we have marked under section 552.136.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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), (b). The city must withhold the personal e-mail address we have marked under section 552.137, unless the owner of the address affirmatively consents to its release.

In summary, the medical records we have marked may only be released in accordance with the MPA. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked pertaining to the named city police department officer under section 552.117(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.136 of the Government Code. The city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address affirmatively consents to its release.³ 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tf

³We 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 credit card, bank account, and bank routing numbers under section 552.136 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 410586

Enc. Submitted documents

c: Requestor
(w/o enclosures)