



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2011

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
1400 South Lamar  
Dallas, Texas 75215

OR2011-06019

Dear Ms. Middlebrooks:

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# 416131 (DPD PIR # 2010-1144).

The City of Dallas (the "city") received a request for employment records, internal affairs records, and public integrity records concerning a named individual. You claim portions of the requested information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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. Part 23 of title 28 of the Code of Federal Regulations was established to regulate intelligence databases pertaining to certain criminal activities, such as drug trafficking and extortion, that involve a large number of participants over a broad geographical area. *See* 28 C.F.R. § 23.2 (providing background of part 23). The policy standards of part 23 are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711, *et seq.* *Id.* § 23.3(a). For purposes of part 23, a criminal intelligence system "means the

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<sup>1</sup>We assume the "representative sample" of records 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 those records contain substantially different types of information than that submitted to this office.

arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information,” and an intelligence project “means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies.” *Id.* § 23.3(b)(1), (5).

The release of information within these criminal intelligence databases is governed by section 23.20 of part 23, which provides in relevant part the following:

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

*Id.* § 23.20(e); (f). For purposes of section 23.20, “criminal intelligence information” means “data which has been evaluated to determine that it: (i) [i]s relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and (ii) [m]eets criminal intelligence system submission criteria[.]” *Id.* § 23.3(b)(3). We understand you to assert the submitted intelligence report information, which you have marked, is information maintained in a multijurisdictional criminal intelligence system. Thus, we conclude the marked information is confidential under section 23.20, and may be released only in accordance with that section. We note the requestor is not a member of a law enforcement authority. *See id.* § 23.20(f)(1). You state the city does not believe disclosure to the requestor is necessary to avoid imminent danger to life or property. *Id.* § 23.20(f)(2). Therefore, we conclude the marked information is confidential under section 23.20 of title 28 of the Code of Federal Regulations, and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”). Occ. Code §§ 151.001-165.160. 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). This office has concluded that 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). Information taken directly from medical records and contained in other documents can be withheld in accordance with the MPA. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Medical records may only be released in accordance with the MPA. *See* ORD 598. Upon review, the medical records we have marked may only be released in accordance with the MPA. However, we find none of the remaining information constitutes a medical record for purposes of the MPA. Accordingly, the city may not withhold any of the remaining information under section 552.101 on that ground.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which provides in relevant part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find the patient form we have marked reveals the identity, evaluation, or treatment of a patient by emergency medical

services personnel. Thus, the marked patient form constitutes EMS records that are subject to chapter 773 of the Health and Safety Code. Accordingly, with the exception of the information subject to section 773.091(g), which is not confidential, the submitted EMS form must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand the city is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You have marked the telephone number and address of a 9-1-1 caller the city seeks to withhold under section 772.318. Provided the telephone number and address were furnished by a 9-1-1 service supplier, we conclude the city must withhold the marked telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. A portion of the remaining information, which you have marked, consists of information acquired from polygraph examinations subject to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. *See id.* at 683. In addition, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). This office has also found a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Common-law privacy also encompasses certain types of personal financial information. *See* Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common-law privacy protects personal financial information not related to a financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). This office also has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* ORD 373. Upon review, we find most of the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and of no legitimate concern to the public. However, we find you

have failed to demonstrate some of the information you marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.101 in conjunction with common-law privacy.

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.<sup>2</sup> 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). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

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. Gov't Code § 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. Therefore, to the extent the employees and former employees to whom the submitted information pertains are licensed peace officers, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

To the extent the employees concerned are not licensed peace officers, their personal information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees concerned timely requested confidentiality under section 552.024, the city must withhold the information we have

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

marked under section 552.117(a)(1). Conversely, to the extent these employees did not make timely elections under section 552.024, the city may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2). Thus, the city must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides in part that "[n]otwithstanding any other provision of [the Act], 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"). The submitted information includes employee identification numbers, which we understand are used with one additional digit in order to access the employee's city credit union bank account. We agree the city must withhold the bank account numbers and bank routing numbers you have marked, and the additional information we have marked, under section 552.136 of the Government Code. However, a check number does not constitute an access device number and may not be withheld based on section 552.136. Accordingly, the city may not withhold the check number you have marked under section 552.136 of the Government Code.

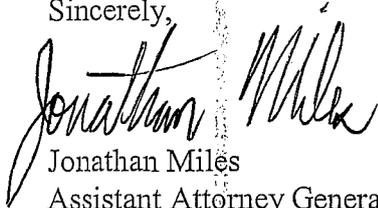
In summary, the city must withhold the marked information section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations. The medical records we have marked may only be released in accordance with the MPA. With the exception of the information subject to section 773.091(g), which is not confidential, the submitted EMS form must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The city must withhold the marked telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, provided the telephone number and address were furnished by a 9-1-1 service supplier. The city must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The city must withhold the information you have marked and the additional information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent the employees and former employees to whom the information pertains are licensed peace officers, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the employees and former employees concerned are not licensed peace officers, but timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code. Except where we have marked for release, the city must withhold the bank account numbers and bank routing numbers you have marked, and the additional information we have marked,

under section 552.136 of the Government Code.<sup>3</sup> 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 416131

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note Open Records Decision No. 684 (2009), which this office issued, is a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and bank account numbers and bank routing numbers under section 552.136 of the Government Code.