



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2011

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
For City of Forney
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-06914

Dear Mr. Moore:

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# 417786.

The Forney Police Department (the "department"), which you represent, received a request for seven categories of information related to any arrests or police contact involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes the fingerprints of the requestor's client. 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 section 560.003 of the Government Code, which provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 of the Government Code provides, "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Because the fingerprints in this case are those of the requestor's client, they must be released to this requestor pursuant to

section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Next, we note the submitted information includes medical records related to the requestor's client. These medical records are subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 552.101 encompasses information made confidential by the MPA. *See* 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 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). We also have determined that when a file is created as the result of a hospital stay, all of the documents in the file relating to the diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Further, 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(5), .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990).

As an attorney for the individual whose medical records are at issue, the requestor may have a right of access to this information. However, we are unable to determine whether the requestor has acquired the proper consent to receive these medical records. We have marked the information that is subject to the MPA. The department must release this information upon receipt of a proper authorization under the MPA. In the absence of a proper

authorization, the department must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. *See* Open Records Decision No. 598 (1991).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked “concerns an alleged driving while intoxicated offense” that “occurred on or about May 15, 2010.” However, upon review we find the information you have submitted relates to an aggravated robbery offense that occurred on May 7, 2010. Based on your representation and our review, we conclude the department has failed to demonstrate the applicability of section 552.108(a)(1) to the information at issue. Accordingly, the department may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center (the “TCIC”) 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.* at 10–12. 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. Section 411.083(b)(1) and 411.089(a) of the Government Code 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. *See* Gov’t Code § 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. Upon review, we find the information we have marked constitutes CHRI generated by the NCIC and the TCIC. The department must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.¹ You claim the remaining information you have marked under section 411.083 consists of CHRI. However, we note section 411.083 does not apply to

¹We note an individual can obtain his own CHRI from DPS. *See* Gov’t Code § 411.083(b)(3).

active warrant information or other information relating to an individual's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Accordingly, the department may not withhold the remaining information you have marked under section 552.101 Government Code in conjunction with section 411.083 of the Government Code.

Section 552.130 excepts from disclosure information related 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. *See Gov't Code* § 552.130(a)(1), (2). We note some of the motor vehicle record information you have marked relates to the requestor's client. Because section 552.130 protects personal privacy, we find the requestor in this case has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a), (b) (individual has special right of access to information that relates to himself and is protected by laws intended to protect his privacy interests, and governmental body may not deny access on ground that information is considered confidential by privacy principles); ORD 481 at 4. Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.²

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. The department may withhold the social security number we have marked under section 552.147.³

To summarize, the department must release the requestor's client's fingerprints under section 560.002 of the Government Code. In the absence of proper authorization under the MPA, the department must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must withhold the CHRI we 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 motor vehicle record information we have marked under section 552.130 of the Government Code. The department may withhold the social security number we have

²We note this office has 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.

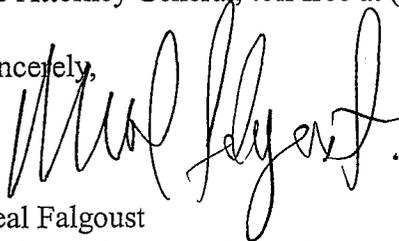
³Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

marked under section 552.147 of the Government Code. 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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 417786

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a right of access to some of the information being released in this instance. Therefore, if the department receives another request for the same information from a different requestor, it must again seek a ruling from this office.