



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2011

Ms. Myrna S. Reingold  
Galveston County  
722 Moody, 5<sup>th</sup> Floor  
Galveston, Texas 77550

OR2011-08431

Dear Ms. Reingold:

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# 420477.

The Galveston County Sheriff's Office (the "sheriff") received a request for all records or documents in the personnel file of a named officer. You state some information has been released. You also state the sheriff will redact fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009).<sup>1</sup> In addition, you state the sheriff will redact social security numbers under section 552.147 of the Government Code.<sup>2</sup> You claim some of the submitted information is excepted from disclosure pursuant to sections 552.101, 552.102, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold ten categories of information, including a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code and L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>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. *See* Gov't Code § 552.147.

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 that other statutes make confidential, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which governs access to medical records. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in pertinent 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). 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 the information we have marked constitutes confidential medical records that may only be released in accordance with the MPA.<sup>3</sup>

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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 laws with respect to the CHRI it generates. *See id.* 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. Sections 411.083(b)(1) and 411.089(a) 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. *Id.* § 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. 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

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. See Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Accordingly, the sheriff must withhold most of the CHRI you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. However, the remaining information, which we have marked for release, does not consist of CHRI and may not be withheld under section 552.101 on the basis of federal law or subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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. *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 demonstrated. *Id.* at 681-82. 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. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). In addition, this office has found an individual's criminal history when compiled by a governmental body may be protected under common-law privacy. Cf. *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that relates to an individual's current involvement in the criminal justice system is not protected by privacy. See Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system).

Upon review, we conclude a portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Thus, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, none of the remaining information you have marked is highly intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

You assert the submitted Minnesota Multiphasic Personality Inventory ("MMPI") is excepted from disclosure under constitutional privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy 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. ORD 455 at 4. 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 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

You argue the submitted MMPI implicates the named officer's right to constitutional privacy. We note the MMPI assumes certain components of the personality and scores people as to these traits on a numerical scale to enable comparison with established norms; a report of an individual's MMPI scores therefore purports to reveal highly intimate information about the individual, including negative characteristics. *See* Open Records Decision No. 600 at 5 (1992) (MMPI scores may reveal, *inter alia*, the applicant's tendency toward hysteria, hypochondria, or mood swings). We have determined such information implicates an individual's *constitutional* right to privacy as distinct from the individual's common-law right to privacy. Open Records Decision No. 600 at 6 (1992) (relying on *Whalen v. Roe*, 429 U.S. 589 (1977) and *McKenna v. Fargo*, 451 F.Supp. 1355 (D.N.J. 1978)). We, therefore, conclude the sheriff must withhold the submitted MMPI information, which you have marked, under section 552.101 in conjunction with constitutional privacy.

You claim some of 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). 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 find the information you have marked 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 the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government

Code.<sup>4</sup> Gov't Code § 552.117(a)(2). The sheriff must withhold the peace officer's personal information you have marked, in addition to the information we have marked, under section 552.117(a)(2) of the Government Code. We note the remaining information contains the personal information of another individual who may be a licensed peace officer employed by the sheriff. Therefore, to the extent this individual is a licensed peace officer employed by the sheriff, the sheriff must withhold this individual's information, which we have marked, under section 552.117(a)(2) of the Government Code.

However, if the second individual is not a licensed peace officer, then that individual's personal information may be subject to section 552.117(a)(1) of the Government Code. We also note the remaining information contains the personal information of another individual that 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 of the Government Code. *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. Therefore, to the extent the personal information we have marked belongs to employees of the sheriff who timely requested confidentiality under section 552.024, the sheriff must withhold the information we have marked under section 552.117(a)(1).<sup>5</sup> Conversely, to the extent the individuals concerned are not employees of the sheriff or did not timely request confidentiality under section 552.024, the sheriff may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.1175 of the Government Code applies to information pertaining to peace officers the sheriff does not hold in an employment context and provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has

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<sup>4</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

<sup>5</sup>Section 552.024 of the Government Code authorizes a governmental body to redact the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential without the necessity of requesting a decision from this office. Gov't Code § 552.024(c); *see id.* §§ 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to the requestor).

family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The remaining information includes personal information of individuals who may be a peace officer with other jurisdictions. If these individuals are currently licensed peace officers, the sheriff must withhold the personal information we have marked under section 552.1175 to the extent the individuals elect with the sheriff to restrict public access to their personal information. If these individuals either are not currently licensed peace officers or do not elect with the sheriff to restrict public access to their personal information, the sheriff may not withhold the marked information pertaining to these individuals under section 552.1175.

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state, motor vehicle title, or registration issued by a Texas agency, or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov't Code § 552.130(a)(1)-(3). We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. Upon review, we agree the sheriff may withhold the Texas driver's license and license plate numbers you have marked pursuant to Open Records Decision No. 684, without seeking a decision from our office. We note the state identification number you have marked is not subject to Open Records Decision No. 684 and may not be withheld without seeking a ruling from this office. However, upon review, we find the sheriff must withhold the Texas state identification number you have marked under section 552.130 of the Government Code.

In summary, the medical records we have marked may only be released in accordance with the MPA. The sheriff must withhold (1) the CHRI you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code, with the exception of the information we have marked for release; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the MMPI information you have marked under section 552.101 in conjunction with constitutional privacy; (4) the information you have marked under section 552.102(a) of the Government Code; and (5) the information you have marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code. The sheriff must withhold the additional information we have marked under

section 552.117(a)(2) of the Government Code, to the extent the individual to whom the information pertains is a licensed peace officer employed by the sheriff. The sheriff must withhold the information we have marked under section 552.117(a)(1) of the Government Code, to the extent the personal information we have marked belongs to employees of the sheriff who timely requested confidentiality under section 552.024 of the Government Code. The sheriff must withhold the personal information we have marked under section 552.1175 of the Government Code, to the extent these individuals are currently licensed peace officers and elect with the sheriff to restrict public access to their personal information. The sheriff must withhold the Texas driver's license and license plate numbers you have marked pursuant to Open Records Decision No. 684 and section 552.130 of the Government Code. The sheriff must also withhold the Texas state identification number you have marked under section 552.130 of the Government Code. 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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 420477

Enc. Submitted documents

c: Requestor  
(w/o enclosures)