



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2012

Mr. Tommy L. Coleman
Assistant District Attorney
Williamson County
405 Martin Luther King, No. 1
Georgetown, Texas 78626

OR2012-04687

Dear Mr. Coleman:

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# 449270.

The Williamson County District Attorney's Office (the "district attorney's office") received a request for all records related to any criminal charges against a named individual pertaining to intoxicated assault with a vehicle. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we address the requestor's contention the district attorney's office did not fully comply with the Act's procedural requirements in asking this office for a ruling. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). The district attorney's office states, and the requestor agrees, it received the request for information on January 6, 2012. We understand the district attorney's office was closed on

January 16, 2012, in observance of Martin Luther King Jr. Day. This office does not count any holidays observed by a governmental body as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the district attorney's office ten-business-day deadline fell on January 23, 2012. Upon review, we find the district attorney's office request for a ruling was postmarked on January 23, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the district attorney's office complied with the requirements of section 552.301 of the Government Code in asking this office for a ruling.

You have submitted a CR-3 crash report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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 550.065(b) of the Transportation Code, which states, except as provided by subsection (c) or (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this case, the requestor has not provided the district attorney's office with two of the three pieces of information. Thus, the district attorney's office must withhold the CR-3 crash report form, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses 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). 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). This office also has concluded when a file is created as the result of a hospital stay, all of the documents in the file that relate to 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). Medical records must be released on receipt of the patient’s signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .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). Upon review, we find the information we have marked consists of medical records subject to the provisions of the MPA. Accordingly, the district attorney’s office must withhold this information under section 552.101 of the Government Code in conjunction with the MPA, unless the district attorney’s office receives proper consent that complies with the MPA.¹ However, upon further review, we find the remaining information you seek to withhold under the MPA does not consist of medical records. Accordingly, the district attorney’s office may not withhold this information under section 552.101 of the Government Code on that basis.

The district attorney’s office seeks to withhold grand jury subpoenas and the information contained in those subpoenas under article 20.02 of the Code of Criminal Procedure, which is also encompassed by section 552.101 of the Government Code. Article 20.02(a) of the Code of Criminal Procedure provides that “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). Article 20.02, however, does not define “proceedings” for purposes of subsection (a). Therefore, we have reviewed case law for guidance and found that Texas courts have not often addressed the confidentiality of grand jury subpoenas under article 20.02. Nevertheless, the court in *In re Reed* addressed the issue of what constitutes “proceedings” for purposes of article 20.02(a) and stated although the court was aware of the policy goals behind grand jury secrecy, the trial court did not err in determining the grand jury summonses at issue were not proceedings under article 20.02. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.). The court further stated the term “proceedings” could “reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations.” *Reed*, 227 S.W.3d at 276. The court also discussed, unlike federal law, article 20.02 does not expressly make subpoenas confidential. *See Reed*, 227 S.W.3d at 276; FED. R. CRIM. P. 6(e)(6).

¹As our ruling is dispositive for this information, we do not address your remaining arguments against disclosure.

Subsequent to the ruling in *Reed*, the 80th Legislature, modeling federal law, added subsection (h) to article 20.02 to address grand jury subpoenas. See Crim. Proc. Code art. 20.02; FED. R. CRIM. P. 6(e)(6) (“Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.”). Article 20.02(h) states that “[a] subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” Crim. Proc. Code art. 20.02(h). This provision, however, does not define or explain what factors constitute “necessary to prevent the unauthorized disclosure of a matter before the grand jury.” *Id.* Because subsection (h) is modeled on federal law, we reviewed federal case law for guidance on a definition or explanation of the factors that would constitute “necessary to prevent the unauthorized disclosure of a matter before the grand jury” for the purposes of keeping grand jury subpoenas secret. Our review of federal case law revealed federal courts have ruled inconsistently on the issue of whether grand jury subpoenas must be kept secret. FED. R. CRIM. P. 6(e)(6) advisory committee’s note (stating federal case law has not consistently stated whether or not subpoenas are protected by rule 6(e)). Furthermore, even if we considered article 20.02 to be a confidentiality provision, information withheld under this statute would only be secret “for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” *Id.*

You seek to withhold the submitted subpoenas, which pertain to a case in which the defendant pled guilty and was sentenced to a term of deferred adjudication. However, you have not submitted any arguments explaining how the matter upon which the submitted subpoenas were based is still “before the grand jury” to warrant keeping the subpoenas secret. Therefore, upon review of article 20.02 and related case law, it is not apparent, and you have not otherwise explained, how this provision makes the submitted grand jury subpoenas confidential. See Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Consequently, the submitted subpoenas may not be withheld under section 552.101 of the Government Code in conjunction with article 20.02 of the Criminal Code of Procedure.

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 or by the Texas Crime Information Center 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. Sections 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 criminal justice purposes. *See id.* § 411.089(b)(1). Upon review, we find the information we have marked constitutes confidential CHRI. The district attorney's office must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Id. § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert release of portions of the requested information would reveal the mental impressions or legal reasoning of prosecutors in the district attorney's office. Based on your representation and our review, we conclude the district attorney's office may withhold the information you have indicated under section 552.108(a)(4) of the Government Code.²

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit, or a motor vehicle title or registration, issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the district attorney's office must withhold the information we have marked and indicated under section 552.130 of the Government Code.

You seek to withhold a social security number. Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public

²As our ruling is dispositive for this information, we do not address your argument under section 552.111 of the Government Code.

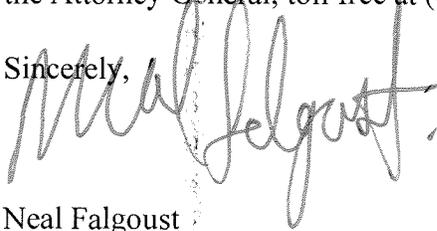
disclosure under the Act. Gov't Code § 552.147. The district attorney's office may withhold the social security number we have marked under section 552.147 of the Government Code.³

In summary, the district attorney's office must withhold the CR-3 crash report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The district attorney's office must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA, unless it receives proper consent that complies with the MPA. The district attorney's office must withhold the CHRI we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The district attorney's office may withhold the information it has indicated under section 552.108(a)(4) of the Government Code. The district attorney's office must withhold the information we have marked and indicated under section 552.130 of the Government Code. The district attorney's office may withhold the social security number we have marked under section 552.147 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, 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

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³We note 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. As our ruling is dispositive, we do not address your argument for this information.

Ref: ID# 449270

Enc. Submitted documents

c: Requestor
(w/o enclosures)