



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2014

Ms. Lisa D. Mares  
For City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2014-08925

Dear Ms. Mares:

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# 524164 (McKinney ID Nos. 10-9810 and 10-9816).

The City of McKinney (the "city"), which you represent, received a request for the following information: (1) specified types of evaluations and polygraph results for a named individual, (2) back-up information pertaining to an expenditure report for the seized asset fund pertaining to five specified items, (3) personnel file information and the final paycheck for a named former city police department officer, and (4) information pertaining to specified radar cables.<sup>1</sup> The city received a second request from a different requestor for information pertaining to the same named former city police department officer. You state the city has released a majority of the requested information to both requestors with redactions made pursuant to sections 552.024 and 552.130 of the Government Code<sup>2</sup> and pursuant to Open

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<sup>1</sup>You state the city received clarification of the first request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, emergency contact information, social security number, and family member information excepted from disclosure under section 552.117 of the Government Code without the necessity of requesting a decision from this office under the Act, if the current or former employee or official timely elected to withhold such information. *See* Gov't Code §§ 552.024(a)-(c), .117. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Records Decision No. 684 (2009).<sup>3</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the request received from the second requestor is narrower than the request received from the first requestor. Thus, the city need not release information to the second requestor that is not responsive to her request for information.

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 section encompasses information protected by other statutes, such as section 611.002 of the Health and Safety Code. Section 611.002 provides “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find the information we have marked in Exhibit D constitutes mental health records the city must withhold under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which provides in pertinent part, the following:

- (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

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<sup>3</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

<sup>4</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. 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. Some of the information at issue consists of reports of the results of drug tests. We note section 159.001 of the MPA defines “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” *Id.* § 159.001(3). Because the individuals at issue in the drug test results reports did not receive medical care in the administration of the drug tests, these individuals are not patients for purposes of section 159.002. Upon review, we find the information we have marked in Exhibits C-1 and C-2 constitutes confidential medical records. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information at issue is subject to the MPA; thus, none of it may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

(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.

*Id.* § 1703.306. Upon review, we find the information we have marked in Exhibit D constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the first requestor falls 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 information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code. Section 1701.545 governs the public availability of information submitted to the Texas Commission on Law Enforcement (“TCOLE”) under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the [TCOLE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

*Id.* § 1701.454. You state Exhibit B was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. You also state the officer at issue did not resign and was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

We note a portion of the remaining information is subject to section 552.117 of the Government Code.<sup>5</sup> Section 552.117(a)(2) applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies

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<sup>5</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information we have marked in Exhibit C-1 is still a licensed peace officer, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

If the individual concerned is no longer a licensed peace officer, the marked information may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the information we have marked in Exhibit C-1 must be withheld under section 552.117(a)(1) of the Government Code.

In summary, the city must withhold (1) the mental health records we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code; (2) the medical records we have marked in Exhibits C-1 and C-2 under section 552.101 of the Government Code in conjunction with the MPA; (3) the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; and (4) Exhibit B under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. If the individual whose information is at issue is still a licensed peace officer, the city must withhold the information we have marked in Exhibit C-1 under section 552.117(a)(2) of the Government Code. If the individual whose information is at issue is no longer a licensed peace officer but timely requested confidentiality pursuant to section 552.024 of the Government Code, the city must withhold the information we have marked in Exhibit C-1 under section 552.117(a)(1) of the Government Code. The city must release the remaining information; however, the city need not release information to the second requestor that is not responsive to her request for information.

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.texasattorneygeneral.gov/open/>

[orl\\_ruling\\_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

Ref: ID# 524164

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)