



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2014

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2014-10140

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# 527381.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for all maintenance logs, notes, and records related to any video recording conducted by a specified sheriff's office vehicle during a specified time period, all complaints relating to or against two named sheriff's office deputies, and all use of force incidents related to two named sheriff's office deputies. You state you will release some of the requested information to the requestor upon his response to a cost estimate. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially we note, in his request for information, the requestor states he is not requesting the named officers' social security numbers, personal bank account information, dates of birth, medical records, home addresses, home telephone numbers, personal cellular telephone

¹Although you raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception to raise for information held in an employment context. In addition, you acknowledge you did not raise section 552.117 of the Government Code until after the ten-business-day deadline had passed. However, because section 552.117 is a mandatory exception to disclosure and may not be waived, we will consider the applicability of section 552.117, as well as the timely-raised exceptions, for the submitted information. *See* Gov't Code §§ 552.007, .301, .302, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

numbers, or personal e-mail addresses. Therefore, this information is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the sheriff's office need not release such information.

Section 552.101 of the Government Code exempts 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 chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation (the "department") 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.² The submitted information contains a CR-3 Texas Peace Officer's Crash Report. In this instance, the requestor has not provided the sheriff's office with two of the three pieces of required information pursuant to section 550.065(c)(4). Accordingly, the sheriff's office must withhold the submitted CR-3 report you 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. 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.

²*See* Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. You state the information you have marked consists of a medical intake screening performed by a nurse under the supervision of a physician. Upon review, we find most of the information you have marked consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created by a physician or information obtained from those records. However, a portion of the information at issue, which we have marked for release, consists of a consent form signed by a patient, and does not consist of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician or information obtained from those records. Accordingly, the consent form we have marked for release is not subject to the MPA and may not be withheld under section 552.101 of the Government Code on that basis. Therefore, with the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints or records of hand or face geometry), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Therefore, the sheriff's office must withhold the fingerprints and palm prints you have marked under section 552.101 in conjunction with section 560.003 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). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office has failed to demonstrate, however, how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff's office may not withhold any portion of the remaining information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find the sheriff’s office must withhold the responsive dates of birth you have marked 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, emergency contact information, 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 section 552.024 or section 552.1175 of the Government Code. Gov’t Code § 552.117(a). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) also encompasses a peace officer’s cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See Open Records Decision No. 506 at 5–7 (1988)* (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, the sheriff’s office must withhold the responsive information you have marked, in addition to the information we have indicated, under section 552.117(a)(2) of the Government Code; however, the sheriff’s office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code § 552.130*. Accordingly, the sheriff’s office must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a).

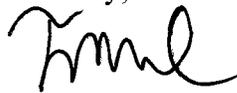
Therefore, the sheriff's office may withhold the responsive social security numbers you have marked under section 552.147(a).

In summary, the sheriff's office must withhold the CR-3 report you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA. The sheriff's office must withhold the fingerprints and palm prints you have marked under section 552.101 in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the responsive dates of birth you have marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the responsive information you have marked, in addition to the information we have indicated, under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The sheriff's office must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The sheriff's office may withhold the responsive social security numbers you have marked under section 552.147(a). The sheriff's office must release the remaining responsive 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 527381

Enc. Submitted documents

c: Requestor
(w/o enclosures)