



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 30, 2015

Mr. Renatto Garcia
Assistant City Attorney
City of Corpus Christi
Legal Department
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-08376

Dear Mr. Garcia:

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# 561942 (CCPD File. No. CS011).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified case. We understand you will redact certain information pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information at issue includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you raise section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed documents, which we have marked, information that has been filed with a court

¹Section 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. See Gov't Code § 552.147(b).

is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Therefore, the department may not withhold the marked court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy. As no other exceptions to disclosure have been raised for this information, it must be released.

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 the common-law right of privacy, which protects information if it (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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, the submitted information pertains to an alleged sexual assault. You state the requestor may be an attorney for the suspect in the submitted information. In the event the requestor is an attorney for the suspect, we find the requestor knows the identity of the alleged victim, and withholding only identifying information from the requestor would not preserve the victim’s common law right to privacy. Therefore, in this instance, the department must withhold the information not subject to section 552.022 in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.² In the event the requestor is not an attorney for the suspect, then we have no indication this is a situation where all of the submitted information must be withheld to protect the victim’s privacy interest. Accordingly, in that event, we will address your remaining arguments against disclosure of the information not subject to section 552.022.

²In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant 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). Information 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. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find Exhibit C constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with the MPA.

As stated above section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information subject to the two-pronged test discussed above. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, we find none of the remaining information to be highly intimate or embarrassing and of no legitimate public interest.

³In this instance, as our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find none of the remaining information is subject to section 552.130 and it may not be withheld on that basis.

In summary, if the requestor is an attorney for the suspect, the department must (1) release the information subject to section 552.022(a)(17) of the Government Code and (2) withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not an attorney for the suspect, the department must (1) withhold Exhibit C under section 552.101 of the Government Code in conjunction with the MPA, (2) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (3) withhold the information we have marked under section 552.130 of the Government Code, and (4) release the remaining 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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 561942

Enc. Submitted documents

c: Requestor
(w/o enclosures)