



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2017

Mr. Craig M. Price
Assistant District Attorney
Grayson County
200 South Crockett Street, Suite 116A
Sherman, Texas 75090

OR2017-23748

Dear Mr. Price:

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# 680865.

The Grayson County Criminal District Attorney's Office (the "district attorney's office") received a request for a specified file pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.132, and 552.1325 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note, and you acknowledge, the district attorney's office did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of

¹Although you raise section 552.1425 of the Government Code, we note this section is not an exception to disclosure. Rather, this section provides for civil penalties when a private entity disseminates certain criminal history record information. *See* Gov't Code § 552.1425.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The district attorney’s office claims sections 552.101, 552.103, 552.108, 552.111, 552.132, 552.1325, and 552.147 of the Government Code for the submitted information. Because sections 552.101, 552.132, and 552.1325 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted information.³ However, we find you have failed to establish a compelling reason to address your remaining exceptions.

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 of the Government Code encompasses information protected by other statutes, such as section 411.083 of the Government Code. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F or subchapter E-1 of chapter 411 the Government Code. *See* Gov’t Code § 411.083(a). 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find some of the information at issue, which we marked, is confidential under section 411.083. Therefore, the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

³Section 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).

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 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. Upon review, we find the information we marked constitutes medical records. As such, the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the district attorney’s office has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the district attorney’s office

may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.132 of the Government Code provides, in relevant part, the following:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Gov't Code § 552.132(b). The information at issue is held by the district attorney's office, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not applicable to this information. Thus, the district attorney's office may not withhold any of the remaining information under section 552.132(b) of the Government Code.

Section 552.1325 of the Government Code provides the following:

(a) In this section:

- (1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.
- (2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

- (1) the name, social security number, address, and telephone number of a crime victim; and
- (2) any other information the disclosure of which would identify or tend to identify the crime victim.

Id. § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). The information at

issue includes a victim impact statement as defined by article 56.03 of the Code of Criminal Procedure. *See id.* § 56.03. The information at issue reflects the victim suffered physical harm as a result of the criminally injurious conduct. Thus, we find the individual who completed the impact statement is a victim for purposes of article 56.32, and thus is a crime victim for purposes of section 552.1325. *See id.* § 56.32(a)(2)(D). We marked the name of the crime victim and information that otherwise identifies or tends to identify the crime victim. Accordingly, the district attorney's office must withhold the information we marked under section 552.1325 of the Government Code. However, we find you have failed to demonstrate the applicability of section 552.1325 to any of the remaining information at issue. Accordingly, the district attorney's office may not withhold any of the remaining information on the basis of section 552.1325 of the Government Code.

In summary, the district attorney's office must withhold the information 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 must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the information we marked under section 552.1325 of the Government Code. The district attorney's office must 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,



D. Michelle Case
Attorney
Open Records Division

DMC/eb

Ref: ID# 680865

Enc. Submitted documents

c: Requestor
(w/o enclosures)