



September 19, 2001

Mr. Joe Jackson
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2001-4197

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152171.

The College Station Police Department (the "department") received a request for 14 categories of information related to a named city police officer. You state that a portion of the requested information is being made available to the requestor, but claim that the remaining portion is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your argument under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides:

- (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.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that 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). We have further found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990).

Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Therefore, we conclude that the submitted medical records, exhibits 98-101, may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

We next address your argument under section 552.108. Section 552.108 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 the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Section 552.108(a)(2) protects information pertaining to a closed case that did not result in a conviction or deferred adjudication. *See* Open Records Decision No. 216 (1978) (addressing applicability of statutory predecessor to closed cases). You contend that the information in exhibits 151-174, 184-189, 190-194, and 195-199 is excepted under section 552.108(a)(2) because “these incidents have not resulted in any conviction or deferred adjudication. The alcohol related charges against each arrestee were dropped after each passed a breathalyzer test.” On this basis, we conclude that you have established that the information in exhibits 151-174, 184-189, 190-194, and 195-199 is excepted under section 552.108(a)(2).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. In this regard, you inform us that you have released as basic information exhibits 151, 184, and 190, with information pertaining to Texas driver’s license and vehicle identification numbers redacted. As driver’s license and license plate numbers do not constitute basic information, and therefore need not be released under section 552.108(c), we need not address your argument under section 552.130.¹

You also argue that certain information contained within submitted exhibits 213-214 is excepted under section 552.117. Section 552.117(2) requires the department to withhold information pertaining to a peace officer if the information relates to the home address, home telephone number, or social security number of that peace officer, or reveals whether the peace officer has family members.² You inform us that the named officer in question is currently a peace officer as defined by article 2.12 of the Code of Criminal procedure. Therefore, upon review of the information you have highlighted in exhibits 213-214, we agree that a portion of this information is excepted under section 552.117(2) and must be withheld from the requestor. We have marked the information to be withheld under section 552.117(2).

To summarize, the submitted medical records, exhibits 98-101, may be released only as provided under the MPA. The information in exhibits 151-174, 184-189, 190-194, and 195-199 is excepted under section 552.108(a)(2), with the exception of basic information. The marked information in exhibits 213-214 is excepted under

¹Section 552.130 of the Government Code exempts from public disclosure “(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]” *See* Gov’t Code § 552.130(a)(1), (2).

² “Peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

section 552.117(2). The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive style with a large initial "M".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref.: ID# 152171

Enc.: Submitted documents

c: Mr. Jim James
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(w/o enclosures)