



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2005

Mr. John S. Holleman  
Criminal District Attorney  
Polk County  
P.O. Box 1717  
Livingston, Texas 77351

OR2005-00886

Dear Mr. Holleman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217766.

The Polk County District Attorney's Office (the "district attorney") received a request for information pertaining to an incident that resulted in injuries to the requestor's client. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information contains medical records, access to which is governed by the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part as follows:

(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(b), (c). 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. *Id.* §§ 159.004, 159.005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). *See Occ. Code* §§ 159.002, 159.004; Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked the submitted documents that constitute medical records and that may only be released in accordance with the MPA. Open Records Decision No. 598 (1991).

You assert that the remaining information is excepted under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the information at issue pertains to an "alleged offense [that] was 'No Billed' by the Polk County Grand Jury on June 30, 2003" and that the relevant investigation "did not result in a conviction or in the imposition of deferred adjudication." Therefore, based on these representations we agree that section 552.108(a)(2) is applicable to the remaining information.

However, section 552.108 does not accept basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, we agree that you may withhold the remaining information from disclosure based on section 552.108.<sup>1</sup>

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<sup>1</sup>We note that the requestor argues the requested information pertains to an investigation that did result in conviction, citing a Judgment on Plea of Guilty or Nolo Contendere Before Court With Waiver of Jury, Cause No. 2002-1073. We note, however, that the submitted plea pertains to a driving while intoxicated case. In this instance, the requestor has sought information related to an aggravated assault case, which, according to the district attorney, concluded in a result other than conviction or deferred adjudication. This ruling does not reach the question of whether information pertaining to the driving while intoxicated case, on its own, would be protected from disclosure under section 552.108.

To conclude, the marked medical records may only be released in accordance with the MPA. With the exception of the basic front page offense and arrest information, the district attorney may withhold the remaining information at issue under section 552.108(a)(2).

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).

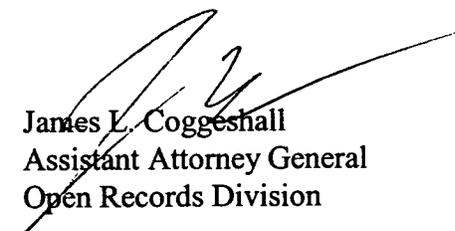
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 217766

Enc. Submitted documents

c: Ms. Theresa A. O'Brien  
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(w/o enclosures)