



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 15, 2008

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2008-11193

Dear Ms. Lentz:

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# 319304.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor, in the request for information, agreed to exclude social security numbers, Texas driver's license numbers, Texas license plate numbers, and any vehicle identification numbers. Thus, any of this information in the submitted documents is not responsive to the instant request, and it need not be released. Accordingly, we do not address your argument under section 552.130 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Access to medical records is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the Occupations Code provides in pertinent part:

(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(b), (c). 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). This office has further found that when a file is created as the result of a hospital stay, all of 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). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991).

When medical records pertain to a minor, such records may only be released upon the parents' or legal guardians' 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; *see also id.* § 159.003 (exception to confidentiality in a civil action if the patient or a person on behalf of the patient is attempting to recover monetary damages for a physical condition). 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). You have marked the information in the submitted report that is subject to the MPA. In this instance, the requestor is the parent of the minor whose medical records are at issue. Thus, the requestor may have a right of access to the marked medical records. The sheriff's office may only disclose this information in accordance with the MPA.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). 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 submitted report pertains to a concluded criminal investigation that was no-billed by the grand jury. Based on your representation and our review of the submitted report, we agree that section 552.108(a)(2) is applicable to the remaining submitted information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information

refers to the information held to be public in *Houston Chronicle*, and includes, among other things, the identification and description of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that the submitted incident report pertains to an alleged sexual assault. Generally, the identity of a sexual assault victim must be withheld from the public under section 552.101 of the Government Code in conjunction with common law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). However, the requestor in this instance is the parent of the victim of the alleged sexual assault and has a special right of access to information that must otherwise be withheld from public disclosure to protect the victim's privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Thus, with the exception of basic information, the sheriff's office may withhold the remaining requested information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

In summary, the sheriff's office may only disclose the medical records you have marked in accordance with the MPA. With the exception of basic information, which must be released, the sheriff's office may withhold the remaining requested information under section 552.108 of the Government Code. We note that the sheriff's office has the discretion to release all or part of the remaining information that is not otherwise confidential by law.<sup>2</sup> Gov't Code § 552.007.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

<sup>2</sup>We note that the sheriff's office would be required to withhold from the public some of the information being released to protect the victim's privacy. Thus, should the sheriff's office receive another request for this same information from a person who would not have a special right of access to it, the sheriff's office should resubmit the same information and request another ruling from this office. *See* Gov't Code § 552.023.

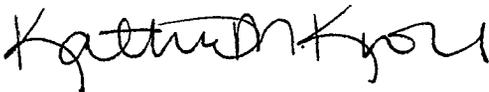
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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,



Katherine M. Kroll  
Assistant Attorney General  
Open Records Division

KMK/eeg

Ref: ID# 319304

Enc. Submitted documents