



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2009

Mr. Jeffrey L. Moore  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2009-01686

Dear Mr. Moore:

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# 334413.

The McKinney Police Department (the "department"), which you represent, received a request for the entire file pertaining to case number 08-66994. You claim the submitted investigation information is excepted from disclosure under sections 552.108, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-15580 (2008). In that ruling, we concluded that, with the exception of basic information, the department may withhold the incident report related to case number 08-66994 under section 552.108(a)(1) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on that ruling as a previous determination and withhold or release the incident report in accordance with Open Records Letter No. 2008-15580. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You claim the remaining information is protected under section 552.108 of the Government Code. This exception generally protects information that, if released, would interfere with the detection, investigation, or prosecution of crime, but does not make information confidential. *See* Gov't Code § 552.108(a)(1). The remaining information, however, includes records that are subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, and section 773.091 of the Health and Safety Code, both of which contain right of access provisions. *See* Occ. Code § 159.005(a)(1), Health & Safety Code §§ 773.092(e)(4), .093. This office has found specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986). Accordingly, we will address the records at issue under the MPA and section 773.091.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as the MPA. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in 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; Open Records Decision No. 598 (1991). 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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1982). This office has also determined when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released upon the patient's signed, written consent, provided 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. We have marked hospital treatment records that constitute medical records. It appears these records pertain to the requestor's client. As the authorized representative of his client, the requestor may have a right of access under the MPA to the marked medical records pertaining to his client. *See id.* § 159.005(a)(1). The marked medical records may only be released in accordance with the MPA.<sup>2</sup> ORD 598.

Section 552.101 also encompasses chapter 773 of the Health and Safety Code, which pertains to emergency medical service ("EMS") records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* ORD 598. Section 773.091 provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). We have marked the documents in the remaining information that constitute confidential EMS records. As previously stated, however, the requestor appears to be the authorized representative of the person to whom the EMS records pertain; thus, he may have a right of access to the marked EMS records. We note records that are confidential under section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." *Id.* §§ 773.092(e)(4), .093. Section 773.093

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument against disclosure for this information.

provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the marked EMS records may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.093.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the remaining information, including the information subject to section 773.091(g), relates to a pending criminal investigation. Based on your representation and our review, we determine the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the remaining information, including the information subject to section 773.091(g) of the Health and Safety Code, pursuant to section 552.108(a)(1) of the Government Code.<sup>3</sup> We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the department must continue to rely on Open Records Letter No. 2008-15580 as a previous determination and, with the exception of basic information, withhold the submitted incident report in accordance with that ruling.<sup>4</sup> The marked medical records may only be released in accordance with the MPA. The marked EMS records may only be released in accordance with chapter 773 of the Health and Safety Code. The remaining information may be withheld under section 552.108 of the Government Code.

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.

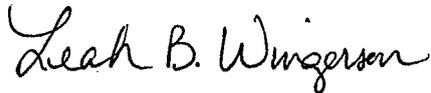
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<sup>3</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for this information.

<sup>4</sup>We note basic information does not include information subject to section 552.130 of the Government Code.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/cc

Ref: ID# 334413

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)