



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2009

Mr. Steven M. Kean
Deputy City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2009-07356

Dear Mr. Kean:

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# 344507.

The Tyler Police Department (the "department") received a request for information pertaining to the death of a specified person. You state that most of the responsive records have been released. You claim that portions of the nine submitted pages are excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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 exception encompasses information that other statutes make confidential. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides, in part:

¹Although you also raise sections 552.130 and 552.147 of the Government Code, we note that the submitted records do not contain motor vehicle record information or social security numbers. Therefore, sections 552.130 and 552.147 are not applicable to this information.

(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). 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). The submitted pages are from a police offense report. You state you have marked information in the report that appears to have been taken directly from medical records. Information taken directly from medical records and contained in other documents can be withheld in accordance with the MPA. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Upon review, we conclude that some of the information you marked was taken directly from medical records. This information, which we have marked, may only be released in accordance with the MPA.² *See* Open Records Decision No. 598 (1991). However, you have failed to demonstrate, and the offense report does not otherwise indicate, that the remaining information you have marked in the report was taken directly from records created by or under the supervision of a physician. Therefore, this information may not be withheld on the basis of the MPA.

You next assert that portions of the remaining information are confidential under section 611.002(a) of the Health and Safety Code, which is applicable to mental health records. Section 552.101 also encompasses section 611.002(a), which provides that “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). You claim that the information you have marked “appears to summarize information that has been taken directly from mental health records[.]” Upon review, we find that you have not demonstrated, and the submitted pages do not otherwise indicate, that any of the remaining marked information was taken directly from mental health records. We therefore conclude that the remaining

²As our ruling for this information is dispositive, we need not address the department's remaining argument against its disclosure.

information you marked is not confidential under section 611.002 of the Health and Safety Code and may not be withheld on that basis.

Section 552.101 also encompasses information made confidential by section 261.201(a) of the Family Code, which provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert that portions of the report were taken from records related to an investigation conducted by Child Protective Services ("CPS") under chapter 261. Upon review, we agree that the information we have marked under section 261.201 was taken directly from records used or developed in an investigation under chapter 261. You do not inform us, and we are not aware, that CPS has adopted a rule governing the release of this type of information under these circumstances. Therefore we assume no such rule exists. Given this assumption, we conclude that the department must withhold the information we have marked under section 552.101 in conjunction with section 261.201 of the Family Code.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 159.002 of the Occupations Code and section 261.201 of the Family Code. The remaining information must be released.

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.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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 344507

Enc. Submitted documents

cc: Requestor
(w/o enclosures)