



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2009

Mr. James Mu
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-11688

Dear Mr. Mu:

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# 353076.

The Texas Department of Criminal Justice (the "department") received a request for assessment and diagnostic medical and mental records of a named parolee. You state that some responsive information has been or will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions 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:

(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 determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; ORD 598. 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. We have marked documents in the submitted records that constitute medical records. We note that as the authorized representative of the individual whose medical records are at issue, the requestor may have a right of access to the marked medical records under the MPA. *See id.* § 159.005(a)(2). The marked medical records may only be released in accordance with the MPA. *See* ORD 598.

The public availability of fingerprints is governed by chapter 560 of the Government Code, which is also encompassed by section 552.101. *See* Gov't Code §§ 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .003 (biometric identifier in possession of governmental body is exempt from disclosure under Act). Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Therefore, as the authorized representative of the individual whose fingerprint is contained in the submitted documents, the requestor has a right of access to that information under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the department must release the submitted fingerprint, which we have marked, under section 560.002 of the Government Code.

Section 552.101 also encompasses section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by the department], including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313(a); *see id.* § .001(9) ("release" means a person released on parole or to mandatory supervision). You state the remaining information is maintained in the parole file of a releasee. After reviewing your arguments and the information at issue, we agree this information is subject to section 508.313. You do not inform us that the requestor is an entity authorized to obtain the information at issue under section 508.313(c), nor do you inform us that any of this information is made public under section 552.029 of the Government Code. *See id.* § 508.313(f). We therefore conclude that the department must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

In summary, the marked medical records may only be released in accordance with the MPA. The department must release the submitted fingerprint, which we have marked, under section 560.002 of the Government Code. The remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 353076

Enc. Submitted documents

c: Requestor
(w/o enclosures)