



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 24, 2009

Ms. Cynthia Villarreal-Reyna
Section Chief - Agency Counsel Section
Legal and Regulatory Affairs Division - MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2009-13456

Dear Ms. Villarreal-Reyna:

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# 356336 (TDI# 93511).

The Texas Department of Insurance (the "department") received a request for all records regarding the requestor's specified complaint. You state the department has provided some of the requested information to the requestor. You claim portions of the submitted letters, driver's accident reports, citations, and medical records are excepted from disclosure under sections 552.136 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim the insurance policy number you have marked in the submitted information is excepted under section 552.136 of the Government Code, which provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We conclude the marked insurance policy number constitutes an access device number for purposes of section 552.136. Thus, the department must withhold the marked insurance policy number under section 552.136 of the Government Code.

You contend the e-mail addresses you have marked in the remaining information are subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The marked e-mail addresses are not specifically excluded by section 552.137(c).¹ You state the owners of the addresses have not consented to their release. As such, the marked e-mail addresses must be withheld under section 552.137 of the Government Code.

We note the remaining information includes Texas motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release.² Gov't Code § 552.130(a)(2). Therefore, the department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code.

We note the remaining information includes medical records subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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

¹We note section 552.137(c) was recently amended to add subsection (c)(5). Act of May 15, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 651, 651-52, *amended by* Act of May 27, 2009, 81st Leg., R.S., ch. 962, § 7, 2009 Tex. Sess. Law Serv. 2555, 2557 (Vernon) (to be codified as an amendment to Gov't Code § 552.137(c)).

²The 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).

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 (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. The marked medical records may only be released in accordance with the MPA. ORD 598.

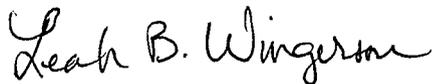
In summary, the department must withhold the marked insurance policy number under section 552.136 of the Government Code; the marked e-mail addresses under section 552.137 of the Government Code; and the marked Texas motor vehicle record information under section 552.130 of the Government Code. The marked medical records may only be released in accordance with the MPA. The remaining information must be released.³

³We note the remaining information contains private information to which the requestor has a right of access in this instance. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Because this information is generally confidential with respect to the general public, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 356336

Enc. Submitted documents

c: Requestor
(w/o enclosures)