



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 25, 2009

Ms. Evelyn W. Njuguna  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 368  
Houston, Texas 77001

OR2009-13573

Dear Ms. Njuguna:

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# 356677 (Houston PIR #15858).

The City of Houston (the "city") received a request for the personnel files of four former city firefighters. You state you have released some responsive information to the requestor. You claim the information you marked is excepted from disclosure under section 552.101 of the Government Code. 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:

- (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). Upon review, most of the documents you marked are medical records. We conclude this information, which we marked, is confidential and must be withheld under the MPA in conjunction with section 552.101 of the Government Code. However, one of the documents you marked under the MPA is merely a cover page. This page is not a record of the identity, diagnosis, evaluation, or treatment of a patient, and you have not shown how this page is a communication between a physician and a patient. Thus, you failed to show how the submitted cover page is a medical record, and it may not be withheld.

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306(a) provides that “[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]” Occ. Code § 1703.306(a). We agree that the polygraph results you marked under this section consist of polygraph information that is confidential under section 1703.306. We also agree that the requestor does not appear to have a right of access to the information under that section; therefore, the city must withhold the polygraph information you marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We agree the medical history information you marked under common-law privacy is highly intimate or embarrassing and not of legitimate public

interest. This medical information is confidential and must be withheld under section 552.101.

In summary, the city must withhold the information we marked under section 552.101 in conjunction with the MPA. The city must also withhold the information you marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code and common-law privacy. 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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 356677

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)