



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2010

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2010-00245

Dear Ms. DeLuca:

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# 366408.

The Bryan Police Department (the "department") received a request for information pertaining to a specified accident. You state most of the requested information has been released. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains breath test results of an arrestee's blood alcohol content. Upon the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. It appears the requestor is the insurance provider of the individual at issue. Thus, the requestor may be acting as this individual's authorized representative. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, if the requestor is an authorized representative of the individual at issue, the department must release the breath test results to the requestor pursuant to section 724.018 of the Transportation Code. If the requestor is not the individual's

authorized representative, we will consider your argument against the disclosure of this information, as well as the remaining submitted information.

Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute, such as the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in pertinent 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). Upon review, we find you have failed to demonstrate how any of the submitted information constitutes a communication between a physician and a patient or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician for purposes of the MPA. Accordingly, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

A portion of the submitted information is subject to section 552.130 of the Government Code.¹ Section 552.130 exempts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. We have marked a driver's license number generally subject to section 552.130. However, as previously noted, the requestor may be acting as this individual's authorized representative. As such, the requestor may have a right of access to the driver's license number belonging to this individual. *See id.* § 552.023(a). If the requestor has a right of

¹The 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).

access under section 552.023 to the marked information, the department must release this information to this requestor. If the requestor does not have a right of access under section 552.023, the department must withhold the information we marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as an authorized representative of the individual at issue, the department must withhold the information we marked under section 552.130 of the Government Code. As you raise no other exception to the disclosure of the remaining information, it must be released. If the requestor is acting as an authorized representative, the department must release the submitted information in its entirety.²

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 366408

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Should the department receive another request for these same records from a person who would not have a right of access to this individual's private information, the department should resubmit these records and request another decision. See Gov't Code §§ 552.301(a), .302.