



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 2, 2010

Mr. Kenneth B. Florence
Assistant District Attorney
123rd Judicial District, Shelby County
200 San Augustine Street, Suite #12
Center, Texas 75935

OR2010-01573

Dear Mr. Florence:

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# 369267.

The Shelby County District Attorney (the "district attorney") received a request for the information pertaining to a specified case. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information are subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- ...
- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...
(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (a)(17). The submitted information includes receipts of fee payments to the Shelby County District Court, as well as court-filed documents. These documents are subject to subsections 552.022(a)(3) and 552.022(a)(17), respectively. Therefore, the district attorney may only withhold this information if it is confidential under "other law." Although the district attorney raises sections 552.103 and 552.108 of the Government Code for this information, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, sections 552.103 and 552.108 do not make information confidential for the purposes of section 552.022. Therefore, the district attorney may not withhold the information subject to section 552.022, which we have marked, under sections 552.103 and 552.108. However, we note some of the information subject to section 552.022 contains information subject to section 552.136 of the Government Code.¹ Because this section is "other law" for purposes of section 552.022, we consider its applicability to the information at issue.

Section 552.136 states that "[n]otwithstanding 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(b). Section 552.136(a) defines "access device" as "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 . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we conclude the bank account numbers and routing numbers we marked must be withheld under section 552.136.² The remaining information subject to section 552.022 must be released.

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).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Next, we address your arguments to withhold the remaining information not subject to section 552.022. We note that some of the remaining documents at issue are medical records pertaining to the requestor's client. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which provides in part the following:

(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.

Occ. Code § 159.002(b), (c). This office has determined 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). This office has concluded that, when a file is created as the result of a hospital stay, all 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 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. *Id.* §§ 159.004. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the medical records of the requestor's client that may only be released in accordance with the MPA.

The submitted information also includes emergency medical service ("EMS") records that are subject to chapter 773 of the Health and Safety Code. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code, which is also encompassed by section 552.101. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part the following:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by

an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. . . .

Health & Safety Code § 773.091(b), (g). We have marked the documents in the remaining information that constitute confidential EMS records. We note records that are confidential under section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." *Id.* §§ 773.092(e)(4), .093. Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. Thus, if the district attorney receives proper consent, the marked EMS records must be released in their entirety in accordance with chapter 773 of the Health and Safety Code. If the district attorney does not receive proper consent, then with the exception of the information subject to section 773.091(g), which is not confidential, the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. We will address your claim under section 552.108 of the Government Code for the remaining information, including the information subject to section 773.091(g).

Section 552.108(a)(4) of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." 873 S.W.2d at 380. You state that the information at issue consists of the prosecutor's entire litigation file for the specified case. Based on your representation and our review, we agree, in accordance with the holding in *Curry*, that section 552.108(a)(4) is generally applicable to the remaining information.

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*).³ Thus, with the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.⁴

In summary, the district attorney must withhold the information we have marked under section 552.136 of the Government Code. The remaining information subject to section 552.022, which we have marked, must be released. The medical records we have marked may only be released in accordance with the MPA. If the district attorney receives proper consent, the marked EMS records must be released in their entirety in accordance with chapter 773 of the Health and Safety Code. If the district attorney does not receive proper consent, then with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. With the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(1) of the Government Code.

³We note the basic information includes the arrestee's social security number, which may be redacted pursuant to section 552.147 of the Government Code. Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure, except to note that basic information may generally not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 369267

Enc. Submitted documents

c: Requestor
(w/o enclosures)