



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2010

Mr. David Daugherty
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-05071

Dear Mr. Daugherty:

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# 375318 (C.A. File No. 10GEN0173).

The Harris County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified accident. You claim that the requested 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, you note the submitted CD includes 9-1-1 calls that do not pertain to the specified accident and thus, are not responsive to the present request. The sheriff need not release non-responsive information in response to this request, and this ruling will not address that 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. You claim the responsive information is protected under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C.

§ 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. *See id.* § 164.502(a). This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We, therefore, held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the sheriff may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

You next claim that the responsive records contain information protected under the Medical Practices Act (“MPA”). Section 552.101 of the Government Code encompasses information protected by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in part:

(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 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). Further, information that is subject to the MPA also includes information that was

obtained from medical records. *See* Occ. Code § 159.002(a)-(c); *see also* Open Records Decision No. 598 (1991). Upon review, we conclude none of the responsive information consists of medical records or information obtained from medical records that is subject to the MPA, and none of it may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 772.318 of the Health and Safety Code. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand that Harris County is within an emergency communication district that is subject to section 772.318. You have marked the telephone numbers and addresses of 9-1-1 callers in the submitted CAD reports that the sheriff seeks to withhold. We note, however, some of the marked addresses appear to be either the addresses of cellular telephone towers nearest to the location of the incident or location closest to the incident, rather than the address of a 9-1-1 caller. Thus, we find that to the extent the marked telephone numbers and addresses are the originating telephone numbers and addresses of the 9-1-1 callers supplied by a service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if any of the marked telephone numbers and addresses are not the originating telephone numbers and addresses of 9-1-1 callers or not supplied by a service supplier, they must be released to the requestor.

Next, we address the sheriff's claim under section 552.101 in conjunction with the informer's privilege for names you have marked in the CAD reports and for the submitted CD. Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

Here, the callers reported a motor vehicle accident to the police. We conclude the sheriff may withhold the names we have marked in the CAD reports as well as the names and telephone numbers of the callers contained in the submitted CD under section 552.101 in

conjunction with the informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). Upon review, however, we find that no portion of the remaining information reveals the identity of an informer. Thus, none of the remaining information may be withheld under section 552.101 based on the informer's privilege.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state.¹ *See* Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130.² We note, however, that because this exception protects personal privacy the requestor has a right of access to his client's motor vehicle record information. Thus, to the extent any of the marked information pertains to the requestor's client, it may not be withheld from the requestor under section 552.130. *See id.* § 552.023(a), (b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

In summary, to the extent the marked telephone numbers and addresses are the originating telephone numbers and addresses of 9-1-1 callers supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The sheriff may withhold the names we have marked in the CAD reports as well as the names and telephone numbers of the callers contained in the submitted CD under section 552.101 in conjunction with the informer's privilege. The sheriff must withhold the information we have marked under section 552.130 of the Government Code unless it pertains to the requestor's client.³ The remaining responsive information 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. *See* 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 Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³In this case because the requestor would have a special right of access to any information being released, the sheriff would again need to seek a decision from this office if it receives another request for the same information from a different requestor.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 375318

Enc. Submitted documents

cc: Requestor
(w/o enclosures)