



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips First Floor
Conroe, Texas 77301

OR2010-05214

Dear Mr. Walker:

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# 376327 (No. 2010-0443).

The Montgomery County Sheriff's Department (the "sheriff") received a request for a call slip relating to a specified welfare check. 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 information you submitted.

Section 552.101 of the Government Code excepts from 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. 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.

Occ. Code § 159.002(a)-(c). Although you appear to contend that the MPA is applicable in this instance, we find that none of the submitted information consists of a communication between a physician and a patient; a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician; or information derived from such a communication or record. *See id.* § 159.002(a)-(c). We therefore conclude that the sheriff may not withhold any of the submitted information under section 159.002 of the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

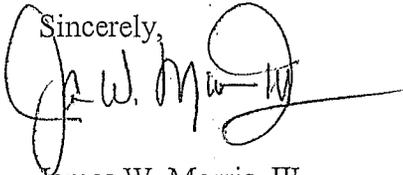
You contend that all of the submitted information must be withheld from this requestor under section 552.101 in conjunction with common-law privacy. Having considered your arguments and reviewed the information at issue, we conclude that this is not such an instance. Nevertheless, we have marked one item of private information that the sheriff must withhold under section 552.101. We find that the remaining information at issue is not intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude that the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The rest of the submitted 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, 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 376327

Enc: Submitted documents

c: Requestor
(w/o enclosures)