



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2010

Mr. John C. West
General Counsel
Office of Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711-3084

OR2010-06249

Dear Mr. West:

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# 377542 (OIG ORR File # OR-2010-00029).

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General (the "OIG") received a request for information pertaining to a specified complaint. You state the OIG plans to release the basic information in Exhibit B to the requestor.¹ See Gov't Code §§ 552.029(8) (stating basic information regarding an alleged crime involving an inmate may not be withheld under section 552.134), 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records No. 127 (1976) (summarizing types of information considered to be basic information). In releasing basic information, the OIG states it will make redactions pursuant to section 552.147 of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).² You claim that the remaining

¹We note the requestor has a special right of access to some of the information being released in this instance. - See Gov't Code-§-552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Because such information may be confidential with respect to the general public, if the OIG receives another request for this information from an individual other than this requestor, it should again seek a ruling from this office. See Gov't Code §§ 552.301, .302.

²Section 552.147(b) of the Government Code 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. Open Records Letter No. 2005-01067 authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether

information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.134, 552.147, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information contains medical records that are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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. Section 552.101 encompasses information made confidential by statute. 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 determined in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act, such as sections 552.108 and 552.134 of the Government Code. *See* Open Records Decision No. 598 (1991). 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). Medical records must be released on receipt of 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. *See id.* §§ 159.004, .005. We have marked medical records that the OIG may only release in accordance with the MPA.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You assert the information in Exhibit C relates to an open criminal investigation by OIG investigators, and that release of anything other than basic information would seriously compromise the

the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 (2001) (listing elements of first type of previous determination under section 552.301(a) of the Government Code).

investigation. We note that section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You explain, however, that release of Exhibit C could compromise the integrity of an investigation into alleged criminal conduct in a correctional facility. Based upon your representation, we conclude the release of Exhibit C would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). Accordingly, the OIG may withhold Exhibit C pursuant to section 552.108(a)(1) of the Government Code.³

In summary, the OIG may only release the marked medical records in accordance with the MPA. The OIG may withhold Exhibit C pursuant to section 552.108(a)(1) of the Government Code.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 377542

Enc. Submitted documents

cc: Requestor
(w/o enclosures)