



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2010

Ms. J. Macklin Milligan
Assistant District Attorney
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2010-06848

Dear Ms. Milligan:

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# 379306.

The Harris County District Attorney's Office (the "district attorney") received a request for interrogations, statements, and/or admissions made by a named physician. You state the district attorney has released some of the responsive information. Although you do not take a position with regards to the public availability of the submitted information, you state an interested third party objects to its release. We have considered the exception raised by the third party and reviewed the submitted information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted curriculum vitae, which we have marked, is not responsive as it does not pertain to the named physician. The district attorney 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, including section 164.007 of the Occupations Code, which in part provides:

Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the [Texas Medical Board] or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). By its terms, section 164.007(c) makes information confidential when in the possession of the Texas Medical Board (the “board”), its employees, or agents. In this case, the information at issue consists of correspondence between the third party, who is the named physician’s attorney, and physicians regarding their evaluation and treatment of her client. The third party states that this information was provided to the board during its investigation of, and settlement negotiations with, her client, as well as to her client’s criminal defense attorney. *See* 22 TAC §§ 178.5-178.7 (providing for communications between board and physician regarding complaint against physician). Although section 164.007 of the Occupations Code provides that confidential information in the possession of the board may be transferred in certain circumstances, we are not informed, nor is it apparent from our review of the submitted information, that the district attorney received the information from the board pursuant to any of the release provisions in section 164.007. *See* Occ. Code § 164.007(d), (f)-(h). *See also* 22 TAC § 179.3 (enumerating entities and persons to whom confidential complaint information may be released). Further, the district attorney does not assert that it is holding these documents as an agent of the board. Accordingly, we conclude that section 164.007(c) does not make the submitted information confidential in this instance, and it may not be withheld on that basis.

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which governs the public availability of mental health records and provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). The information we have marked consists of mental health records subject to section 611.002(b). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by

certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). You do not indicate that the requestor has a right of access to the marked information under sections 611.004 or 611.0045. Therefore, the district attorney must withhold the marked information under section 552.101 of the Government Code in conjunction with section 611.002 of the Occupation Code. The remaining 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/em

Ref: ID# 379306

Enc. Submitted documents

c: Requestor
(w/o enclosures)