



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-07178

Dear Ms. Cohen:

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# 379837 (ORA # 10-0580).

The Texas Department of Public Safety (the "department") received a request for information related to a specified investigation. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that in a letter dated March 17, 2010, the department stated that it wishes to withdraw its request for an open records decision with regard to the submitted Ranger report, and we understand that these documents will be released to the requestor. Accordingly, this information, which we have marked, is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request.

Next, you inform us that a portion of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-16369 (2009). In that decision, we ruled that the information at issue was excepted from disclosure under section 552.108 of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the

department may continue to rely on that ruling as a previous determination and continue to treat any previously ruled upon information in accordance with that prior ruling.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your claimed exception for the responsive information not previously ruled on.

You state that the remaining responsive information is subject to section 552.101 of the Government Code. 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. Section 159.002 of the MPA 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 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). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Medical records must be released upon the governmental body's receipt of 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

¹As we are able to make this determination, we need not address your remaining argument against disclosure of this information except to note that section 552.108 protects law enforcement interests rather than privacy rights. *See* Gov't Code § 552.108. Therefore, section 552.023 of the Government Code does not apply, and the requestor does not have a special right of access to the submitted information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

whom the information is to be released. *See* Occ. Code §§ 159.004, .005. 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. *See* Open Records Decision No. 565 at 7 (1990). Therefore, the medical records you have marked may only be released in accordance with the MPA.

In summary, the department may continue to rely on Open Records Letter No. 2009-16369 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The medical records you have marked may only be released in accordance with the MPA.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 379837

Enc. Submitted documents

c: Requestor
(w/o enclosures)