



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2010

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

OR2010-09202

Dear Mr. Swope:

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# 383996 (C.A. File No. 10GEN0726).

The Harris County Sheriff's Office (the "sheriff") received a request for all information pertaining to a specified accident, including fifteen categories of information. You state you have no information pertaining to some of the requested categories of information.¹ 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 submitted 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. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides:

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See* Open Records Decision No. 680 at 5 (2004); *see also* Fam. Code § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”); 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). We note, however, that section 58.007(c) is applicable to information that relates to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.* § 58.007(c). You assert the submitted information is a juvenile law enforcement record subject to section 58.007 of the Family Code. However, upon review, we find this information does not identify a juvenile as a suspect or offender and does not involve delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007(c). Therefore, we conclude you have failed to establish section 58.007(c) of the Family Code is applicable to the submitted information, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. 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.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded 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). Upon review, however, we find you have failed to demonstrate how the submitted 9-1-1 computer-aided dispatch ("CAD") reports and audio recordings consist of communications between a physician and a patient; records of the identity, diagnosis, evaluation, or treatment of a patient; or information obtained from such communications or records. *See* Occ. Code § 159.002(a)-(c). Thus, these records do not constitute medical records for purposes of the MPA, and they may not be withheld on this 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 Harris County is within an emergency communication district that is subject to section 772.318.

You raise section 772.318 for the telephone numbers and addresses of the 9-1-1 callers in the submitted CAD reports and audio recordings. We note section 772.318 only applies to information furnished by a 9-1-1 service supplier. To the extent the telephone numbers and addresses we marked in the CAD reports are the originating telephone numbers and addresses 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. If the telephone numbers and addresses we marked in the CAD report were not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.318. Furthermore, the telephone numbers and addresses in the audio recordings were furnished to the 9-1-1 dispatchers by the 9-1-1 callers. Accordingly, section 772.318 is not applicable to the telephone numbers and addresses in the audio recordings, and this information may not be withheld under section 552.101 on that basis. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied

from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As you raise no further exceptions to disclosure, the remaining 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 383996

Enc. Submitted documents

c: Requestor
(w/o enclosures)