



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2010

Mr. Thomas A. Gwosdz
City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2010-09989

Dear Mr. Gwosdz:

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# 383672.¹

The Victoria Police Department (the "department") received two requests for information relating to a specified case. You state the department has released or will release some of the responsive information. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure.² We have considered your arguments and reviewed the submitted information.

Initially, we note the information you seek to withhold includes prosecution charge reports subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides

¹This office originally assigned identification numbers 383672 and 384373 to these separate requests for a ruling. These requests have been combined and are being issued as one ruling with the identification number noted above.

²You contend that the submitted prosecution charge reports are excepted from disclosure pursuant to section 552.101 in conjunction with the "attorney work product privilege." We therefore understand you to claim this information is privileged pursuant to rule 192.5 of the Texas Rules of Civil Procedure. However, we note that this office has concluded section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).*

for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). As such, this information must be released under section 552.022(a)(1) of the Government Code, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." TEX. R. CIV. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the submitted charge reports or the other document the department seeks to withhold, which pertain to a criminal case. Therefore, the department may not withhold the information at issue under rule 192.5. However, we note that portions of the submitted charge report are subject to sections 552.101 and 552.130 of the Government Code.³ Since these exceptions are other law for the purposes of section 552.022(a)(1), we will consider these exceptions. We will also consider the exception you raise for the remaining information not subject to section 552.022(a)(1).

You state a portion of the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations 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. Section 552.101 encompasses medical records that 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.

³The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Occ. Code § 159.002(a)-(c). This office has found that when a file is created as the result of a hospital stay, all of the documents in the file relating to diagnosis and treatment constitute either 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 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* Occ. Code §§ 159.004, .005. We have marked medical records that are confidential and may only be released in accordance with the MPA.

Section 552.101 also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* § 411.090-.1407. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked information in the submitted charge reports that consists of CHRI that is confidential under section 411.083. Accordingly, the department must withhold this information pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

The submitted information also includes photographs taken during an autopsy. Section 552.101 also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and

shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25. Neither exception to confidentiality applies to the submitted autopsy photographs, in this instance. Therefore, the department must withhold submitted photographs that were taken during an autopsy pursuant to section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. However, the submitted information also contains photographs that are not photographs of a body taken during an autopsy. These remaining photographs are not confidential under article 49.25, and the department may not withhold them under section 552.101 on that basis.

We note the submitted charge reports, as well as the remaining information, contain Texas motor vehicle record information subject to section 552.130 of the Government Code. This section excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration issued by an agency of this state or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov't Code § 552.130(a)(1)-(3). The department must withhold the information we have marked pursuant to section 552.130 of the Government Code.⁴

Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). The department must withhold the insurance policy number we have marked pursuant to section 552.136 of the Government Code.

In summary, the department may only release the marked medical records in accordance with the MPA. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold submitted photographs that were taken

⁴We note that section 552.130 does not encompass Texas driver's license information that pertains to a deceased individual. *See* Open Records Decision No. 272 (1981). We further note section 552.130 does not apply to out-of-state driver's license information.

during an autopsy pursuant to section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The department must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code.⁵ The remaining information must be released.⁶

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 383672

Enc. Submitted documents

c: Requestors
(w/o enclosures)

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers, a portion of a photograph depicting a Texas license plate number, and license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁶We note the remaining information contains social security numbers. Section 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. *See* Gov't Code § 552.147.