



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

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Mr. James Mu
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Mr. John C. West
General Counsel
Texas Department of Criminal Justice
Office of the Inspector General
4616 Howard Lane, Suite 250
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OR2010-13216

Dear Mr. Mu and 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# 392315.

The Texas Department of Criminal Justice (the "department") received two requests from two requestors for records pertaining to a named inmate, including records related to the investigation of a specified accident. The department's Office of the General Counsel (the "OGC") and its Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate responsive documents that each seeks to withhold from disclosure. The OGC and OIG both state they will provide some of their responsive information to the requestor. The OIG states it is withholding certain addresses, telephone numbers, social security numbers, and personal family information pursuant to sections 552.117 and 552.147(b) of the Government Code, as well as the previous determination issued by this

office in Open Records Letter No. 2005-01067 (2005).¹ The OGC claims the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code, while the OIG claims the information it has submitted is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the claimed exceptions 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. This exception encompasses information that other statutes make confidential. The OIG claims a portion of its submitted information is confidential under section 552.101 in conjunction with the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs the public availability of medical records. Section 159.002 of the MPA provides in pertinent 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.

Occ. Code § 159.002(a), (b), (c). Information that is 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 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). This office has determined that in governing access to a specific subset

¹We note Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code. Further, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person from public release without the necessity of requesting a decision from this office under the Act.

of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked documents in the submitted information that constitute medical records, which involve the client of one requestor. These records, however, must be withheld under the MPA, unless the OIG receives consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

The OGC and the OIG both claim their submitted information is excepted under section 552.134(a) of the Government Code, which relates to inmates of the department and provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

(1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate[.]

Id. § 552.029(1). Upon review of the submitted information, we conclude section 552.134(a) is generally applicable to the OGC's information and a portion of the OIG's information. We note, however, most of the OIG's and the OGC's submitted information pertain to an injury suffered by an inmate. Therefore, the OIG and the OGC must release information pertaining to the nature of the inmate's injury. *See id.* The OGC must withhold its remaining

information pursuant to section 552.134 of the Government Code.² The OIG may withhold a portion of its remaining information under section 552.134 of the Government Code. However, a portion of the OIG's information is about an employee of the department or the department's project agreement with the City of Childress. Thus, we find the OIG has failed to demonstrate how this information, which we have marked, is about an inmate for purposes of section 552.134. Accordingly, the OIG's remaining information may not be withheld under section 552.134 of the Government Code.

The OIG claims its remaining information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that 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); *see also* Open Records Decision No. 350 at 3-4 (1982). In this instance, the submitted file pertains to an ongoing administrative investigation of a department employee's alleged violation of a department rule of conduct. You state, however, that the OIG believes there may be evidence of criminal culpability on the part of this employee or others which could lead to indictments and criminal prosecution. You also state release of anything other than basic information at this time could compromise the integrity of the investigation efforts and facilitate the commission of a crime. Based on your representations and our review, we determine release of the submitted information 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 its remaining information pursuant to section 552.108(a)(1) of the Government Code.

In summary, the OIG may only release the marked medical records in accordance with the MPA. With the exception of information pertaining to the nature of the inmate's injury, the OGC must withhold its remaining information under section 552.134 of the Government Code. With the exception of information pertaining to the nature of the inmate's injury and the information we have marked for release, the OIG must withhold its remaining

²As our ruling is dispositive, we need not address the OGC's remaining argument against disclosure.

information about the named inmate under section 552.134 of the Government. The OIG may withhold its remaining information 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 392315

Enc. Submitted documents

c: Requestor
(w/o enclosures)