



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2010

Mr. Russell Brown
Manager of Information Services
Bellaire Police Department
5110 Jasmine
Bellaire, Texas 77401-4495

OR2010-14274

Dear Mr. Brown:

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# 394056 (OR 10-11).

The Bellaire Police Department (the "department") received a request for all call for service ("CAD") reports from June 25, 2010, through June 28, 2010. You claim 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 representative sample of information.¹

Initially, we address your claim the request is "overly broad" because it seeks CAD reports on a daily basis and could contain voluminous information that is confidential by law pursuant to numerous statutes. We note the requestor seeks CAD reports for a specified time period and states she will be making the same type of request in the future. Although a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future, this request seeks

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

documents the department maintained on the date it received the request. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). You argue in order to comply with the request, the department would be administratively burdened. We note a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Thus, the department must release the requested information unless it falls within the scope of an exception to disclosure.

You assert the CAD reports contain information that is confidential under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. *See id.* § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* ORD 681 at 8; *see also* Gov't Code §§ 552.002, .003, .021. We therefore held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the department may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 of the Government Code exempts 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 other statutes make confidential. Medical records 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.

Occ. Code § 159.002(a)-(c). 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). Further, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002, .004; *see also* Open Records Decision No. 598 (1991). Although you contend the MPA is applicable to the CAD reports, you have not demonstrated that any of the information at issue either consists of or was obtained from medical records. *See id.* We therefore conclude the department may not withhold any of the responsive information on the basis of the MPA.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides in relevant part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or

physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(a)-(b). The CAD reports do not contain a communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that was made in the course of providing emergency medical services to the patient. *See id.* § 773.091(a). They also do not contain a record of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that was created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, none of the CAD reports are confidential under section 773.091, and the department may not withhold them under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See Open Records Decision No. 649 (1996)*. These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. These sections only protect the originating addresses and telephone numbers of individuals who actually called 9-1-1.

You state the City of Bellaire is located in Harris County and is subject to section 772.118 of the Health and Safety Code. In this instance, you inform us the CAD reports include “[9-1-1] caller information supplied by a [9-1-1] district subject to 772.118 (Greater Harris County 911)[.]” Based on your representation, we find to the extent the telephone numbers and addresses in the submitted CAD reports are the originating telephone numbers and addresses provided by a 9-1-1 service supplier, the department must withhold them under section 552.101 in conjunction with section 772.118. To the extent the telephone numbers and addresses in the CAD reports are not originating telephone numbers and addresses supplied by a 9-1-1 service supplier, section 772.118 is not applicable to this information and it may not be withheld under section 552.101 on that basis.

We note portions of the CAD reports are subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). The department must withhold the Texas driver's license and motor vehicle record information we marked in the CAD reports under section 552.130.

Lastly, we note section 552.136 of the Government Code is applicable to some of the remaining information. Section 552.136 provides in part that "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the department must withhold the insurance policy numbers we marked under section 552.136.

In summary, to the extent the telephone numbers and addresses in the submitted CAD reports are the originating telephone numbers and addresses provided by a 9-1-1 service supplier, the department must withhold them under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. The department must also withhold the Texas driver's license and motor vehicle record information we marked under section 552.130 of the Government Code and the insurance policy numbers we marked under section 552.136 of the Government Code.³ 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.

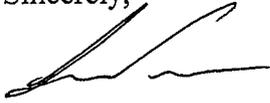
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We 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 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.

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,

A handwritten signature in black ink, appearing to read 'Ana Carolina Vieira', with a stylized flourish at the end.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 394056

Enc. Submitted documents

c: Requestor
(w/o enclosures)