



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2010

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
Killeen Police Department  
3304 Community Boulevard  
Killeen, Texas 76542

OR2010-14518

Dear Ms. Mapes:

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# 394770 (request ID number W003902).

The City of Killeen (the "city") received a request for information pertaining to a specified incident. You state you have released basic information to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes a medical record subject to the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Occ. Code §§ 151.001-165.160. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by

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<sup>1</sup>Basic information includes the identification and description of a complainant. ORD 127 at 4. Because of the nature of this incident, the complainant's identity would be protected from public disclosure under common-law privacy. Open Records Decision No. 393 (1983) (stating information that either identifies or tends to identify victim of sexual assault must be withheld under common-law privacy); *see* Open Records Decision No. 339 (1982). However, the requestor has a right to her identifying information pursuant to section 552.023 of the Government Code. Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates solely on grounds that information is considered confidential by privacy principles). Therefore, if the city receives a request for this information from another requestor, then the city must again seek our decision.

judicial decision.”<sup>2</sup> Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as the MPA, which governs access to medical records. Section 159.002 of the MPA provides in pertinent part:

(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 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 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 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). We have marked a hospital treatment record that constitutes a medical record. Although you claim this medical record is excepted under section 552.108 of the Government Code, the MPA’s specific right of access provision prevails over the Act’s general exceptions to disclosure. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, if the requestor provides proper consent in accordance with the MPA, the marked medical record must be released. If the requestor does not provide proper consent, the marked medical record must be withheld under section 552.101 of the Government Code in conjunction with the MPA.

You claim the remaining information is excepted under section 552.108 of the Government Code. Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

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

prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). 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). You state that the remaining information pertains to a concluded investigation by the city’s police department that did not result in a conviction or a deferred adjudication. Based on these representations and our review, we conclude section 552.108(a)(2) is applicable to the remaining information in this instance. Therefore, with the exception of basic information, which you state you have released, the city may withhold the remaining information under section 552.108(a)(2).

In summary, the medical record we have marked may only be released in accordance with the MPA. With the exception of basic information, which you state you have released, the city may withhold the remaining information under section 552.108(a)(2).

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](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,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/dls

Ref: ID# 394770

Enc. Submitted documents

c: Requestor  
(w/o enclosures)