



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2011

Mr. Daniel Presley
Government Liaison
City of Texarkana
P.O. Box 1967
Texarkana, Texas 75504

OR2011-00630

Dear Mr. Presley:

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# 405731.

The Texarkana Fire Department (the "department") received a request for any information relating to a specified incident. You state you have released some of the requested information to the requestor. We understand you to claim that some of the requested 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. Thus, section 552.101 encompasses information other statutes make confidential. For information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. You contend the information you have marked is protected 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, except 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 section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent 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 the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. Therefore, we 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 information that is subject to disclosure under the Act confidential, the department may not withhold any information under section 552.101 on that basis.

We note the information at issue is subject to section 773.091 of the Health and Safety Code.¹ Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which is applicable to information relating to the provision of emergency medical services (“EMS”) and provides in pertinent part:

(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.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Upon review we find the information you have marked constitutes EMS records maintained by an EMS provider documenting emergency medical service provided to a patient by EMS and, therefore, is generally confidential under section 773.091. *See id.* § 773.003(8) (defining “emergency medical services” for the purposes of chapter 773 of the Health and Safety Code). We note information made confidential by section 773.091 may be released to “any person who bears a written consent

¹The 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).

of the patient or other persons authorized to act on the patient's behalf." *Id.* § 773.092(e)(4). Section 773.093 provides that a consent for release of EMS records must be in writing, signed by the patient, authorized representative, or personal representative, and specify (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. *Id.* § 773.093(a). When the patient is deceased the patient's personal representative may consent to the release of the patient's records. *Id.*; *see also* Open Records Decision No. 632 (1995) (defining "personal representative" for purposes of section 773.093 of the Health and Safety Code). We note the department has received a consent form for release of this information from the requestor. This office is unable to make a determination on the validity of the consent form; therefore, we must rule conditionally. If the department determines it has received proper consent, the EMS records at issue must be released in their entirety in accordance with chapter 773 of the Health and Safety Code. If the department determines it has not received proper consent, then with the exception of the information subject to section 773.091(g), which is not confidential, the EMS records at issue must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 405731

Enc. Submitted documents

c: Requestor
(w/o enclosures)