



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2011

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2011-01258

Dear Ms. Lentz:

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# 407194.

The Williamson County Sheriff's Office (the "sheriff") received a request for the complete case file related to a named individual and a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. Section 552.101 encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part:

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 those submitted to this office.

(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, when a file is created as the result of a hospital stay, all the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released on the patient's signed, written consent, provided that the consent specifies the (1) information to be covered by the release, (2) reasons or purposes for the release, and (3) 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). The information we have marked constitutes medical records subject to the MPA. These records may be released only as provided under the MPA. *See* Open Records Decision No. 598 (1991).

Section 552.101 also encompasses section 611.002(a) of the Health and Safety Code, which provides "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find the information we have marked consists of mental health records. Accordingly, the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 611.002(a) of the Health and Safety Code.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in the possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of

the submitted fingerprint information in this instance. Therefore, the sheriff must withhold the fingerprints you have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center (the "TCIC") is confidential under federal and state law. 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. Open Records Decision No. 565 at 7 (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(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). Upon review, we find the Federal Bureau of Investigation ("FBI") number we have marked constitutes CHRI generated by the FBI, which the sheriff must withhold pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information that you have marked under common-law privacy is not highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the sheriff may not withhold the remaining information you have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). The

sheriff must withhold the driver's license information you have marked under section 552.130 of the Government Code.

Section 552.136 states, "[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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The sheriff must withhold the credit card numbers you have marked under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. The sheriff may withhold the social security numbers you have marked and the number we have marked under section 552.147.²

In summary, the medical records we have marked may be released only as provided by the MPA. The sheriff must withhold: (1) the mental health records we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code; (2) the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (3) the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (4) the information we have marked under section 552.101 Government Code in conjunction with common-law privacy; (5) the information you have marked under section 552.130 of the Government Code; and (6) the information you have marked under section 552.136 of the Government Code.³ The sheriff may withhold the social security numbers you have marked and the number we have marked under section 552.147 of the Government Code. 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.

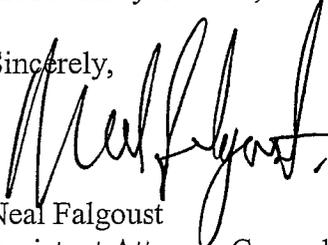
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

²We note 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 under the Act.

³We note this office has 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 and a copy of a Texas driver's license under section 552.130 of the Government Code and a credit card number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 407194

Enc. Submitted documents

c: Requestor
(w/o enclosures)