



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2011

Ms. Jessica C. Eales
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-03566

Dear Ms Eales:

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# 411146 (GC No. 18095).

The Houston Police Department (the "department") received a request for twenty-two categories of information concerning a specified motor vehicle/pedestrian accident. You claim the records contained in Exhibits 2 and 3 are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note Exhibit 2 contains the results of an analysis of an individual's blood specimen. Section 724.018 of the Transportation Code provides, "[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. In this instance, the requestor may be requesting the information as the attorney of the individual whose specimen is at issue. Although you claim

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.

the information is excepted from disclosure under section 552.108 of the Government Code, the specific right of access provision codified in section 724.018 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). Therefore, if the requestor is the attorney of the individual whose specimen is at issue, the department must release the results of the analysis of the specimen we marked pursuant to section 724.018 of the Transportation Code.

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 section encompasses information that other statutes make confidential, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides, in 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.

Id. § 159.002(b), (c). Information 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 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 also determined when a file is created as the result of a hospital stay, all of 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). We have marked a hospital patient record contained in Exhibit 2. Medical records must be released upon the patient's signed, written consent, provided 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. Occ. Code §§ 159.004, .005. Although you seek to withhold the medical record we marked under section 552.108 of the Government Code, as previously noted, a specific statutory right of access provision prevails over general exceptions to disclosure under the Act. *See* ORD 451 at 4. In this instance, the requestor may be the authorized representative of the patient whose medical record is at issue. If he is the authorized representative of this patient,

the requestor may have a right of access to the medical record we marked under the MPA. *See* Occ. Code §159.005(a)(2). Thus, unless the department receives proper written consent for the release of the medical record, it must withhold this record pursuant to section 552.101 in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health & Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] 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). Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Exhibit 2 contains a record created by EMS personnel. Upon review, we find section 773.091 is applicable to this record, which we marked. Records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information[.]” *Id.* §§ 773.092(e)(4), .093. Section 773.093 provides a consent for release of EMS records must be written and signed by the patient, authorized representative, or personal representative and must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. *Id.* § 773.093(a). As noted above, a specific statutory right of access provision prevails over general exceptions to disclosure under the Act, such as section 552.108 of the Government Code. *See* ORD 451 at 4. Thus, if the requestor is the authorized representative of the patient and the department receives proper consent, the EMS record we marked must be released in its entirety in accordance with chapter 773 of the Health and Safety Code. Otherwise, with the exception of information subject to section 773.091(g), the EMS record must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

We now address your section 552.108 claim for the remaining information. Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department advises, and provides documentation showing, that because no charges were filed in its investigation of the specified accident, the records contained in Exhibits 2 and 3 pertain to a criminal investigation that did not result in a conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the remaining information contained in Exhibits 2 and 3 may be withheld under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is the attorney of the individual whose blood specimen is at issue, the department must release the marked results of the analysis of the specimen pursuant to section 724.018 of the Transportation Code. Unless the department receives proper written consent for the release of the marked medical record, it must be withheld under section 552.101 of the Government Code in conjunction with the MPA. If the department receives proper consent, the EMS record we marked must be released in its entirety in accordance with chapter 773 of the Health and Safety Code. With the exception of basic information, the remaining information contained in Exhibits 2 and 3 may be withheld under section 552.108(a)(2) 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 411146

Enc. Submitted documents

c: Requestor
(w/o enclosures)