



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 8, 2011

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2011-04891

Dear Ms. Quinn:

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# 414609 (Cedar Park reference number 11-280).

The City of Cedar Park (the "city") received a request for all records related a specified address, including all dispatch records, incident reports, and arrest reports related to four named individuals during a specified period. You state the city will make some of the information available to the requestor with redactions pursuant to Open Records Decision No. 684 (2009) and section 552.147(b) of the Government Code.¹ You claim the submitted information is 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 information.

¹This office has issued Open Records Decision No. 684, 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 credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. We note, however, that Open Records Decision No. 684 does not authorize a governmental body to withhold a vehicle identification number under section 552.130 of the Government Code without requesting a decision from this office. Section 552.147 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. See Gov't Code § 552.147(b).

Initially, we note you have submitted medical records that relate to the requestor's minor ward. These medical records, which we have marked, are governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001–167.202. 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 section 159.002 of the MPA, which 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). 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). We note medical records involving a minor may be released under the MPA with the parent's or legal guardian'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. 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). As the guardian of the child whose medical records are at issue, the requestor may have a right of access to the information we have marked under the MPA. Occ. Code § 159.005(a)(2). If the requestor provides proper consent in accordance with the MPA, then the city must release the marked medical records. If the requestor does not provide proper consent, then the city must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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. *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. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouses files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. The requestor here seeks “all [dispatch] records, incident reports, arrest reports” involving four named individuals during a specified period. Upon review, we find this request requires the city to compile unspecified criminal history records concerning the individuals named in the request, and thus, implicates the named individuals’ right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.²

In summary, the city may release the medical records we have marked in Exhibit D only if it receives proper consent from the requestor under the MPA. If the city does not receive proper consent from the requestor, it must withhold the medical records under section 552.101 of the Government Code in conjunction with the MPA. To the extent the city maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

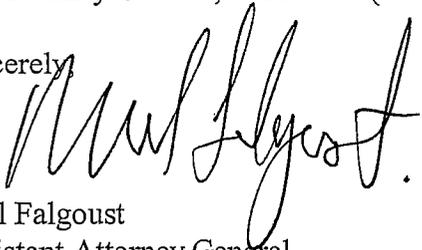
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we do not address your arguments against disclosure.

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 "Neal Falgoust". The signature is written in a cursive style with a large, prominent initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 414609

Enc. Submitted documents

c: Requestor
(w/o enclosures)