



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 2, 2011

Ms. Linda M. Champion  
Assistant City Attorney  
City of Victoria  
P. O. Box 1758  
Victoria, Texas 77902-1758

OR2011-05926

Dear Ms. Champion:

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# 416091.

The City of Victoria (the "city") received two requests for the report regarding a specified incident. You state some information will be released to the requestors upon payment of copying fees. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. This section encompasses information 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 relevant 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). 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). Information taken directly from medical records and contained in other documents can be withheld in accordance with the MPA. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). We also have concluded 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). Medical records may only be released in accordance with the MPA. *See* Open Records Decision No. 598 (1991). You claim the submitted report constitutes medical records that are confidential under section 159.002 of the Occupations Code. However, the report at issue was created by the city's police department. You have not shown how the information at issue constitutes communications between a physician and a patient or documents the identity, diagnosis, evaluation, or treatment of a patient by a physician. Thus, the submitted report does not constitute medical records for purposes of the MPA and may not be withheld on that basis.

We note portions of the submitted information are subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 of the Government Code excepts from disclosure "information [that] relates to (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a). We have marked the information that is subject to section 552.130. However, section 552.130 protects personal privacy. In this instance, the marked information pertains to the first requestor. This requestor has a special right of access to her own information under section 552.023 of the Government Code. *Id.* § 552.023(a)-(b) (governmental body may not deny access to person to whom information relates on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the marked information may not be

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<sup>1</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withheld from the first requestor. However, this information must be withheld from the second requestor under section 552.130.<sup>2</sup>

In summary, the city must release the submitted information in its entirety to the first requestor. As to the second requestor, the city must withhold the information we have marked under section 552.130 and release the remaining information.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID # 416091

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.