



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 13, 2011

Mr. R. Brooks Moore
Texas A&M University System
Office of the General Counsel
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2011-08358

Dear Mr. Moore:

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# 425126 (TAMU-11-290).

Texas A&M University (the "university") received a request for information pertaining to a specified incident. You state the university will release basic information to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 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. Section 552.101 encompasses information that other statutes make confidential, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which provides confidentiality for medical records. Section 159.002 of the MPA provides in part the following:

(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). Information that is 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). We have also found when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute 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). Medical records must be released upon the patient's signed, written consent, provided that 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. *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). Upon review, we agree that the information you have marked consists of medical records that the university must withhold under the MPA, unless the university receives written consent for release of those records that complies with section 159.005(a)(5) of the Occupations Code.

You claim the remaining information you have marked is excepted from disclosure under section 552.108(a)(1) of the Government Code, which excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information at issue relates to an open and pending criminal case. Based upon your representation and our review, we conclude that the release of the remaining information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the university may withhold the information you marked under section 552.108(a)(1).

Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator's or driver's license issued by an agency of this state [.]” *Id.* § 552.130(a)(1). We note that Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including

Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. Upon review, we agree that the city must withhold the Texas driver's license numbers under section 552.130 of the Government Code. We note that the marked driver's license state designations are not protected under section 552.130 of the Government and may not be withheld under that exception pursuant to Open Records Decision No. 684. As you raise no further exceptions against their disclosure, we have marked the driver's license state designations for release.

In summary, the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA, unless the university receives written consent for release of those records that complies with section 159.005(a)(5) of the Occupations Code. The university may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the Texas driver's license numbers you have marked under section 552.130 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 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 425126

Enc. Submitted documents

c: Requestor
(w/o enclosures)