



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-08529

Dear Ms. P. Armstrong:

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# 421114 (ORR# 2011-2870).

The Dallas Police Department (the "department") received a request for information pertaining to a specified investigation. You claim some of the requested information is exempted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note you have submitted medical records that relate to the requestor's minor child. 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 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² 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

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.

²The 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).

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 determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* 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 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 parent 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 department must release the marked medical records. If the requestor does not provide proper consent, then the department must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

Next, section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information you have marked relates to a pending criminal investigation and prosecution. Based on this representation, we conclude the release of this information 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, we

agree the department may withhold the remaining information you have marked under section 552.108(a)(1).

In summary, if the requestor provides proper consent in accordance with the MPA, then the department must release the marked medical records. If the requestor does not provide proper consent, then the department must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. The department may withhold the remaining information you have marked under section 552.108 of the Government Code. The department must release the remaining information to the requestor.³

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bs

Ref: ID# 421114

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor, as the parent of the individual whose information is at issue in the submitted documents, has a right of access to information about that individual in the submitted documents that otherwise would be excepted from release under the Act. See Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor.