



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2011

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2011-08699

Dear Ms. Lentz:

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# 421039.

The Williamson County Sheriff's Office (the "sheriff") received a request for information related to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information was created after the request was received. This information, which we have indicated, is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the sheriff is not required to release non-responsive information in response to this request.

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 made confidential by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. 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.* This office has concluded that 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 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). 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 the information you have marked constitutes medical records. Accordingly, the sheriff must withhold the information you have marked under section 159.002 of the MPA, unless the sheriff receives the required written consent for release of this information under sections 159.004 and 159.005 of the MPA.¹

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code §552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. You state the remaining responsive information relates to a pending criminal investigation. Upon review, we find that section 552.108(a)(1) is generally applicable to the remaining responsive information. *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).

Section 552.108 does not except 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*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.²

In summary, the sheriff must release or withhold the medical records you have marked in accordance with the MPA. With the exception of basic information, the sheriff may withhold the remaining responsive information under section 552.108(a)(1) 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

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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,

A handwritten signature in black ink, appearing to read 'Vanessa Burgess', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 421039

Enc. Submitted documents

c: Requestor
(w/o enclosures)