



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2011

Mr. Robert J. Davis
For Collin County
Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2011-08739

Dear Mr. Davis:

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# 421056 (File No. 1600-63988).

Collin County, the Collin County Sheriff's Office, and Correctional Healthcare Management (collectively, the "county"), which you represent, each received a request for all information related to the requestor's client's incarceration in the county jail and the requestor's client's medical records.¹ You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 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, which we have marked, is not responsive to the instant request for information because it was created after the date the request for information was received. This ruling does not address the public availability of the information that is not responsive to the request, and the county is not required to release such information in response to this request.

Next, we note the submitted responsive information includes documents filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is

¹You state the medical records requested from Correctional Healthcare Management ("CHM") belong to the county, per CHM's health services agreement with the county. Thus, you have submitted arguments on behalf of CHM with respect to the requested medical records.

expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked the documents that are subject to section 552.022(a)(17). Although you seek to withhold these documents under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions that protect a governmental body's interest and are, therefore, not "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, the court-filed documents at issue may not be withheld under sections 552.103 and 552.108 of the Government Code. As you raise no further exceptions to disclosure of the court-filed documents, this information must be released pursuant to section 552.022(a)(17). However, we will consider your claims under sections 552.101, 552.103, and 552.108 for the information that is not subject to section 552.022(a)(17).

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, which governs access to medical records. *See* Occ. Code §§ 151.001-165.160. 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.

Id. § 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 determined 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 (1988), 370 (1983), 343 (1982). We have also found that 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." *See* Open Records Decision No. 546 (1990). 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). Pursuant to the MPA, 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, 159.005. 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 find the information we have marked constitutes the requestor's client's medical records. If the requestor provides proper consent in accordance with the MPA, the marked medical records must be released because a statutory right of access prevails over a claim under section 552.103 or section 552.108 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If the requestor does not provide proper consent, the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.108(a)(1) 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[.]" Gov't Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), 552.301(e)(1)(A). We note the remaining information includes a statutory warning. Because a copy of this document, which we have marked, has been provided to the arrestee, we find that its release will not interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.108(a)(1). Therefore, the county may not withhold the marked statutory warning under section 552.108(a)(1). You state the remaining responsive information relates to a pending criminal investigation being conducted by the Plano Police Department (the "department"). You also state the department contends release of this information would interfere with the detection, investigation, or prosecution of this case. Based upon this representation and our review, we conclude that the release of the remaining responsive information would interfere with the detection, investigation, or prosecution of crime, and agree that section 552.108 is applicable. *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.*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 of the Government Code does not except from disclosure 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*. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. *See* Open Records Decision No. 127 (1976)

(summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of the statutory warning and basic information, the county may withhold the remaining responsive information pursuant to section 552.108(a)(1) of the Government Code.²

You claim the statutory warning is excepted under section 552.103 of the Government Code. Section 552.103 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation

²As our ruling is dispositive for the information subject to section 552.108(a)(1), we do not address your remaining claim against disclosure for this information, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

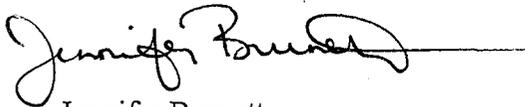
through discovery procedures. *See* ORD 551 at 4-5. Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. As discussed above, the statutory warning was provided to the arrested individual. Therefore, the statutory warning may not be withheld under section 552.103 of the Government Code.

In summary, the county must release the court-filed documents we have marked under section 552.022(a)(17) of the Government Code. If the requestor provides proper consent in accordance with the MPA, the marked medical records must be released to the requestor pursuant to the MPA. Otherwise, the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA. With the exception of the statutory warning and basic information, the county 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 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 421056

Enc. Submitted documents

c: Requestor
(w/o enclosures)