



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 28, 2011

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2011-09155

Dear Ms. Hojem:

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# 423360 (ORR# 2011-0205).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for "the entire investigation case concerning the complaint filed involving [the requestor] and the METRO Police Department." You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains medical records that are subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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). Medical records must be released upon the patient'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. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Although you assert this information is except from disclosure pursuant to section 552.108 of the Government Code, access to records created or maintained by a physician subject to the MPA is governed by the provisions of that statute, rather than by the Act. Open Records Decision No. 598 (1991). Thus, METRO may only release the submitted medical records, which we have marked, in accordance with the MPA.

You assert the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. However, section 552.108 generally is not applicable to an internal administrative investigation involving a law enforcement officer that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990). Exhibit E consists of an internal professional standard investigation file and Exhibit F consists of an internal criminal investigation file. You state the professional standard investigation file was investigated by METRO's Professional Standards Section and, upon completion of its investigation, the case was referred to METRO's Criminal Investigations Division, which is a law-enforcement agency. *See* Transp. Code § 451.108. You inform us the Criminal Investigations Division referred the case to the Harris County District Attorney's Office, which declined to accept any criminal charges and the file was closed. You also assert the internal criminal investigation file relates to a criminal investigation that did not result in conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) is applicable to the remaining information.

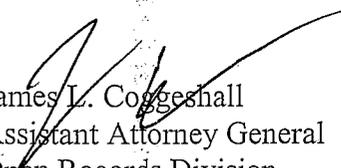
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, METRO may withhold the remaining information under section 552.108(a)(2) of the Government Code.

To conclude, the marked medical records may only be released in accordance with the MPA. With the exception of basic information, METRO may withhold the remaining information under section 552.108(a)(2) 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 423360

Enc. Submitted documents

c: Requestor
(w/o enclosures)