



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2011

Mr. Stan Springerley
Civil Assistant District Attorney
Smith County
100 North Broadway, 4th Floor
Tyler, Texas 75702

OR2011-12059

Dear Mr. Springerley:

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# 427437.

The Smith County Sheriff's Office (the "sheriff") received a request for all medical records related to the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we address your contention that the sheriff need not complete the business records affidavit submitted by the requestor because it requires the sheriff to create information not in existence when the sheriff received the instant request. We note a governmental body is not required to create new information in response to a request under the Act. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995). See Gov't Code § 552.021 (defining "public information" as information "collected, assembled, or maintained" by a government body), *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 268 (Tex. Civ. App.—San Antonio 1978, writ dismissed) (ruling a governmental body could not be required to make copies of documents no longer in its possession). Further, the Act

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 those submitted to this office.

does not require a governmental body to answer factual questions or conduct legal research in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Therefore, we conclude the sheriff is not required to complete a business records affidavit in response to a request made under the Act.

Next, we note the submitted information contains a medical record. 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. This exception encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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.

Occ. Code § 159.002(b)-(c). 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). This office also has concluded when a file is created as the result of a hospital stay, all of the documents in the file relating to the diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released on receipt of the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the 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). Although you seek to withhold the medical record we have marked under sections 552.103 and 552.108 of the Government Code, we note the MPA's specific right of access provision prevails over the Act's general exceptions to disclosure. *See* Open Records Decision No. 598 (1991). In this instance, the requestor may have a right of access to his client's own medical record. Occ. Code §§ 159.004, .005. Accordingly, the medical record we have marked may be released only in accordance with the MPA.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

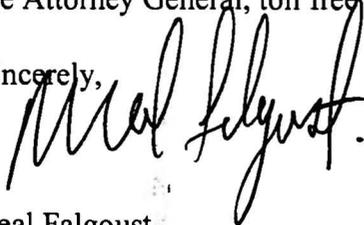
Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain the requestor’s client has appealed his criminal conviction and the appeal is pending. Thus, we understand you to assert the remaining information is excepted from required disclosure because it relates to a pending criminal prosecution. *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). Based on your representation and our review, we find the release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. Accordingly, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the sheriff may release the medical record we have marked only in accordance with the provisions of the MPA. The sheriff may withhold the remaining 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

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³As our ruling is dispositive, we do not address your remaining argument against disclosure.

Ref: ID# 427437

Enc. Submitted documents

c: Requestor
(w/o enclosures)