



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2011

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2011-13203

Dear Ms. Byles:

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# 430041 (PIR No. W009864).

The City of Fort Worth (the "city") received a request for information relating to a specified arrest of a named individual. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.<sup>1</sup>

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 exception encompasses information other statutes make confidential. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

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<sup>1</sup>You state social security numbers and motor vehicle record information have been redacted from the submitted documents pursuant to section 552.147(b) of the Government Code and previous determinations issued under section 552.130 of the Government Code. See § Gov't Code § 552.147(b) (authorizing governmental body to redact living individual's social security number from public release without necessity of requesting attorney general's decision); Open Records Decision Nos. 684 (2009) (authorizing all governmental bodies to withhold a Texas driver's license number under section 552.130 without requesting attorney general's decision), 673 (2001) (previous determinations).

(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 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 on the patient's signed, written consent, provided that 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). The city must withhold the medical record we have marked under section 159.002 of the MPA unless the city receives the required consent for release under sections 159.004 and 159.005 of the MPA.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has concluded other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You have marked portions of the remaining information you contend are private under section 552.101. We find some of that information is not highly intimate or embarrassing. Thus, that information, which we have marked for release, is not protected by common-law privacy and may not be withheld on that basis. We agree the remaining information you have marked, as well as the additional information we have marked, is highly intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude the city must withhold the remaining information you have marked and the additional information

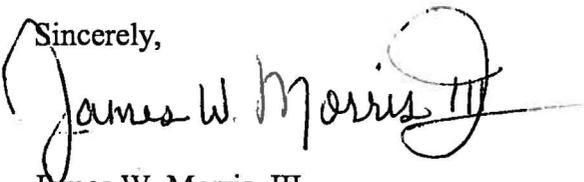
we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold (1) the marked medical record under section 159.002 of the MPA unless the city receives the required consent for release under sections 159.004 and 159.005 of the MPA and (2) the remaining information you have marked, except for the information we have marked for release, and the additional information we have marked to be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup> The city must release the rest of the submitted information.

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](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 W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 430041

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the remaining information includes a social security number. As previously noted, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.