



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2011

Ms. Charlotte A. Towe
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2011-13760

Dear Ms. Towe:

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# 432114.

The Texas Department of Criminal Justice (the "department") received a request for a named inmate's travel card and classification file. You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You first claim some of the submitted information is excepted by section 552.101 of the Government Code, which 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 of the Government Code also encompasses information other statutes make confidential, including the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs the public availability of medical records. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in pertinent part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). Information 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 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. Upon review, we marked the medical record in the submitted information. 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. Although you claim this document is excepted by sections 552.103 and 552.134 of the Government Code, 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 ORD 598*. 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). Therefore, the department must withhold the marked medical record under section 552.101 of the Government Code in conjunction with the MPA, unless the department receives consent for release of this record that complies with sections 159.004 and 159.005(a)(5) of the MPA.

You claim the remaining information is excepted by section 552.134 of the Government Code. Section 552.134 relates to inmates of the department and provides in relevant part as follows:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). You represent the remaining information consists of information about an inmate confined in a department facility. You also represent this information is not made public by section 552.029. Therefore, based on your representations and our review, we agree this information is subject to section 552.134 of the Government Code, and the department must withhold the submitted information on that basis. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, the department must withhold the marked medical record under section 552.101 of the Government Code in conjunction with the MPA, unless the department receives consent for release of this record that complies with sections 159.004 and 159.005(a)(5) of the MPA. The department must withhold the remaining information under section 552.134 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/akg

Ref: ID# 432114

Enc. Submitted documents

c: Requestor
(w/o enclosures)