



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2011

Mr. Bradford Clements
Assistant District Attorney
Dallas County District Attorney's Office
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2011-13810

Dear Mr. Clements:

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# 430757.

The Dallas County District Attorney's Office (the "district attorney") received a request for a specified district attorney trial file. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, and 552.1325 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation made of, for, or by the district attorney. Pursuant to section 552.022(a)(1), these records are expressly public unless they are either excepted under 552.108 of the Government Code or expressly confidential under other law. Sections 552.103 and 552.111 of the Government Code are discretionary exceptions that protect a governmental body's interest and may be waived. *See Dallas Area Rapid Transit*

¹Although you raise section 552.101 of the Government Code in conjunction with sections 552.130 and 552.1325 of the Government Code, section 552.101 does not encompass other exceptions in the Act.

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), 552 (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, sections 552.103 and 552.111 do not constitute other law that makes information confidential for the purposes of section 552.022(a)(1). Consequently, the submitted information may not be withheld under section 552.103 or section 552.111. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, 552.130, and 552.1325, we address the submitted arguments under these exceptions.

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 Occupations Code provides in pertinent 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.

Id. § 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 has also determined when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records 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). 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. Occ. Code §§ 159.004, .005. We have marked medical records in the submitted information. We note the requestor may be the authorized representative of the individual whose medical records are at issue. Although you claim these medical records are also excepted under section 552.108 of the Government Code, the MPA's specific right of access provision

prevails over the Act's general exceptions to disclosure. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, the marked medical records may only be released in accordance with the MPA.

Section 552.101 of the Government Code also encompasses section 258.102 of the Occupations Code. Section 258.102 provides in pertinent part as follows:

(a) The following information is privileged and may not be disclosed except as provided by this subchapter:

(1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and

(2) a dental record.

Occ. Code § 258.102(a). A person who receives information that is privileged under section 258.102 may disclose that information to another person only to the extent disclosure is consistent with the purpose for which the information was obtained. *See id.* § 258.108. A "dental record" means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *See id.* § 258.101(1). Information that is privileged under chapter 258 of the Occupations Code may be disclosed only under certain specified circumstances. *See id.* § 258.104 (consent to disclosure). The written consent for the release of privileged information required under section 258.104 must specify (1) the information covered by the release, (2) the person to whom the information is to be released, and (3) the purpose for the release. *Id.* § 258.104(c). We have marked dental records in the remaining information. We note the requestor may be the authorized representative of the individual whose dental records are at issue. Although you claim these records are excepted under section 552.108 of the Government Code, a specific statutory right of access provision prevails over the Act's general exceptions to disclosure. *See* ORD 451 at 4. Thus, the marked dental records may only be released in accordance with chapter 258 of the Occupations Code.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380.

The present request seeks a specified prosecution file. You state the requested information "represent[s] the mental impressions, opinions, legal theories, and conclusions of the attorneys representing the [s]tate in this case." Based on your representations and our review, we conclude section 552.108(a)(4) of the Government Code is applicable to the remaining information.

We note, 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). Section 552.108(c) refers to basic "front-page" information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, an identification and description of the complainant, but does not include the identities of victims or witnesses or motor vehicle information subject to section 552.130 of the Government Code. *See* ORD 127. Thus, with the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.²

In summary, the district attorney may only release the marked medical records in accordance with the MPA and the marked dental records in accordance with chapter 258 of the Occupations Code. With the exception of basic information, which must be released, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 430757

Enc. Submitted documents

c: Requestor
(w/o enclosures)