



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2011

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2011-14983

Dear Ms. Bull:

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# 434607 (APD Reference 4925, 5027).

The Arlington Police Department (the "department") received two requests for information pertaining to a specified incident, excluding any TCIC/NCIC criminal history information and specified photographs.¹ You indicate the department has released some of the requested information, and you explain the first requestor has withdrawn his request for medical records. Therefore, you state you are only seeking a ruling with regard to the second request. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

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

¹You state the department asked for and received clarification of the requests. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request).

²Although you also raise section 552.108 of the Government Code, you have submitted no arguments in support of the applicability of this exception to the submitted information. Therefore, we assume you no longer claim section 552.108. *See* Gov't Code § 552.301(e)(1)(A).

Code § 552.101. This section encompasses chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) states “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). A portion of the submitted information constitutes mental health records. Therefore, the department may only release these mental health records, which we have marked, in accordance with sections 611.004 and 611.0045. *See* Health & Safety Code § 611.004(a)(5) (professional may disclose confidential information to patient’s personal representative if patient is deceased).

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. 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.

Id. § 159.002(b), (c). This office has concluded that 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). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Section 159.001 of the MPA defines “patient” as a person who consults with or is seen by a physician to receive medical care. *See* Occ. Code § 159.001(3). Medical records must be released upon the governmental body’s receipt of the patient’s signed, written consent, provided that 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. *See* Occ. Code §§ 159.004, .005. The medical records of a deceased

patient may only be released on the signed written consent of the decedent's personal representative. *See id.* § 159.005(a)(5). Upon review, we find the information we have marked consists of medical records subject to the MPA. Accordingly, we conclude the information we have marked may only be released in accordance with the MPA. However, we find no portion of the remaining information at issue consists of medical records subject to the MPA. Accordingly, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

In summary, the department may only release the marked mental health records in accordance with sections 611.004 and 611.0045 of the Health and Safety Code and the marked medical records in accordance with the MPA. The department must release the remaining 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, 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 434607

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)