



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 18, 2011

Mr. Jimmy A. Cassels, P.C.  
Cassels & Reynolds, L.L.P.  
P.O. Box 1626  
Lufkin, Texas 75902-1626

OR2011-15189

Dear Mr. Cassels:

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# 431811.

The Angelina County and Cities Health District (the "district"), which you represent, received three requests from the same requestor for information pertaining to surveillance equipment, and audio recordings, video recordings, and photographs of events during specified time periods. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you ask whether some of the submitted information is responsive to the instant request for information. This decision does not address the public availability of the non-responsive information and that information need not be released. However, we note a governmental body must make a good faith effort to relate a request to information held by

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<sup>1</sup>We 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 that submitted to this office.

the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Because you have submitted the information at issue, we find the district has made a good-faith effort to submit information that is responsive to the request. We will therefore address your claimed exceptions for 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 Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

*Id.* § 418.182(a), (b). The fact information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You contend some of the submitted information is confidential under section 418.182. You explain the information at issue relates to the workings, operation, capabilities, limitations and the location of a security system used to protect the district from acts of terrorism or related criminal activity. You contend public disclosure of the information at issue would reveal the type of security equipment the district utilizes, the number and location of the cameras, details of the cameras’ pixel and speed capabilities and their scope and purview in capturing images, and other characteristics of the district’s security and surveillance systems. Based on your representations and our review of the information at issue, we conclude the district has demonstrated most of the information at issue falls within the scope of section 418.182(a).

We note some of the information at issue is related to the expenditure of funds by the district for its video surveillance system. This information is subject to disclosure under section 418.182(b) of the Government Code and may not be withheld under section 552.101 in conjunction with section 418.182(a) of the Government Code. *See id.* § 418.182(b); *see also id.* § 418.182(a) (section 418.182(a) not applicable to information subject to section 418.182(b)). Accordingly, with the exception of the information we have marked under section 418.182(b), the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.<sup>2</sup> *See generally Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (case construing section 418.182 of the HSA, which ruled recorded images necessarily relate to specifications of security system that recorded them).

You also seek to withhold the information subject to section 418.182(b) under section 552.139 of the Government Code, which provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under [s]ection 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use; and

(3) a photocopy or other copy of an identification badge issued to an official or employee of a governmental body.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 5 (to be codified at Gov't Code § 552.139). However, section 418.182(b) of the Government Code states, “[f]inancial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.” *See* Gov't Code § 418.182(b). Further, general

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<sup>2</sup>As our ruling is dispositive with respect to the information at issue, we need not address your remaining argument against its disclosure.

exceptions to disclosure under the act, such as section 552.139, do not apply to information made public by other statutes. *See, e.g.*, Open Records Decision No. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public). Thus, the information at issue may not be withheld under section 552.139 of the Government Code.

Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). You argue the marked information related to the expenditure of funds by the district for its video surveillance system is confidential pursuant to section 2059.055 of the Government Code. We note section 2059.055 only applies to network security information. Chapter 2059 is entitled “Texas Computer Network Security System,” and section 2059.001(3) of the Government Code defines “network security” as “the protection of computer systems and technology assets from unauthorized external intervention or improper use.” *See id.* § 2059.001(3). Upon review, we find you have failed to explain how the information at issue consists of network security information as defined above. Thus, we find the information at issue does not constitute confidential network security information as described in section 2059.055. Accordingly, the district may not withhold the information under section 2059.055 of the Government Code.

You raise section 552.101 in conjunction with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) for portions of the remaining information. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these

standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. *Id.* § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. *See* Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We therefore held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the district may not withhold any portion of the remaining information on that basis.

Section 552.101 also encompasses information other statutes make confidential, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code. *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). 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). Information subject to the MPA includes both medical records and information obtained

from those records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). You state some of the submitted information consists of photographs of medical conditions that were created by a health care provider operating under the supervision of a physician. You further state the information at issue is maintained in patients' medical files and relates to the provision of health care to the individuals depicted. Upon review, we find you have demonstrated a portion of the information at issue, which we have marked, consists of physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the district must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have failed to demonstrate how any portion of the remaining information at issue, consisting of education training photographs, constitutes a medical record for purposes of the MPA. Accordingly, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the information we have marked for release under section 418.182(b) of the Government Code, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The district must withhold the marked medical

records under section 552.101 of the Government Code in conjunction with the MPA. The remaining information must be released.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 431811

Enc. Submitted documents

c: Requestor  
(w/o enclosures)