



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 13, 2011

Mr. Brad Bowman  
General Counsel  
Texas Department of Licensing and Regulation  
P.O. Box 12157  
Austin, Texas 78711

OR2011-18310

Dear Mr. Bowman:

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# 440435.

The Texas Department of Licensing and Regulation (the "department") received two requests for the names of contestants who were drug tested at a specified fighting event. You claim 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 submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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.

Occ. Code § 159.002(b), (c). 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. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

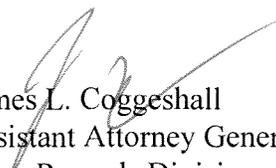
The submitted information consists of letters from the department to contestants informing them that, pursuant to section 61.47(p) of title 16 of the Texas Administrative Code, they must present themselves to a laboratory and submit specimens for drug testing. *See* 16 T.A.C. § 61.47(p) (person who applies for or holds a license as a contestant must provide urine specimen for drug testing either before or after bout, if directed by executive director or director's designee). You assert that because the contestants' drug results will be reviewed by a medical doctor, the contestants would be "patients" for purposes of the MPA. *See* Occ. Code § 159.001(3) (for purposes of MPA, "patient" means "person who, to receive medical care, consults with or is seen by a physician") Thus, you argue, "release of the names of the recipients of the letters [at issue] would allow one to glean from those records the substantive content of records otherwise protected from disclosure, i.e., whether after examination/evaluation of the patient by a physician the medical records show a positive or negative drug screen" (emphasis in original). However, upon review, we find you have not established any of the submitted information consists of a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician. *See id.* Occ. Code § 159.002(b). Therefore, we find you have failed to establish the submitted information consists of medical records for purposes of the MPA. Accordingly, the department may not withhold the submitted information under section 552.101 on that ground, but instead must release it to the requestor.

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 L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 440435

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)