



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2011

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2011-18414

Dear Ms. Chatterjee:

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# 438935 (U.T. OGC# 139890).

The University of Texas Medical Branch at Galveston (the "university") received a request for a specified arrest report. You state the university is releasing basic information. You claim a portion of the submitted information is not subject to the Act. You also claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.130, 552.147, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you argue the information you have marked under section 181.006 of the Health and Safety Code is not subject to the Act. Section 181.006 states "[f]or a covered entity that is a governmental unit, an individual's protected health information . . . is not public information and is not subject to disclosure under [the Act]." Health & Safety Code § 181.006(2). Section 181.006(2) does not remove protected health information from the Act's application, but rather states this information is "not public information and is not subject to disclosure under [the Act]." We interpret this to mean a covered entity's protected

health information is subject to the Act's application. Furthermore, this statute, when demonstrated to be applicable, makes confidential the information it covers. Thus, we will consider your arguments for this information, as well as the other 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. Section 552.101 encompasses information protected by other statutes, such as section 181.006 of the Health and Safety Code. As noted above, section 181.006 states that: "for a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2) defines "[c]overed entity," in part, as:

[A]ny person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2). We understand the university operates a hospital that maintains health information for the individuals it serves, including information showing that individuals received medical care from the university. You assert the information you have marked consists of protected health information. Thus, you claim the university is a covered entity for the purposes of section 181.006 of the Health and Safety Code. However, the information at issue is contained in records of the university's police department (the "department"), which you explain is a law enforcement agency. You have not demonstrated how the department is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any of the information at issue is subject to section 181.006 of the Health and Safety Code. Accordingly, none of the

information at issue may be withheld under section 552.101 of the Government Code on that basis.

We note the submitted information contains medical records that are subject to the Medical Practice Act (the “MPA”). Section 552.101 of the Government Code also encompasses the MPA, subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA 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.

Occ. Code § 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). 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. Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Although you claim the medical records at issue are 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). Accordingly, if the requestor provides proper consent in accordance with the MPA for the medical records we have marked, they must be released. If the requestor does not provide proper consent, then the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA.

We will now address your arguments under section 552.108 of the Government Code for the remaining information you have marked that is not subject to the MPA. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the

information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation from the department representing, the remaining information you have marked pertains to a pending criminal investigation. Based upon your representation and our review, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the university may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.¹

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov’t Code § 552.147. You state the university will redact the arrestee’s social security number you have marked pursuant to section 552.147(b).² Accordingly, the university may generally withhold the arrestee’s social security number under section 552.147. However, in this instance, we note the requestor is the arrestee’s husband and may be acting as an authorized representative for his wife. In that case, the requestor has a right of access to the social security number of the arrestee, and it may not be withheld from him under section 552.147. *See id.* § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests).

In summary, if the requestor provides proper consent in accordance with the MPA for the medical records we have marked, they must be released. If the requestor does not provide proper consent, then the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA. The university may withhold the remaining information you have marked under section 552.108(a)(1) 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.

¹As our ruling is dispositive of this information, we need not address your remaining arguments against disclosure.

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in dark ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 438935

Enc. Submitted documents

c: Requestor
(w/o enclosures)