



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2012

Ms. Patricia Fleming
Ms. Charlotte A. Towe
Assistant General Counsels
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2012-08754

Dear Ms. Fleming and Ms. Towe:

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 requests were assigned ID# 455869 and ID# 458387. We have combined these files and will consider the issues presented in this ruling assigned ID# 455869.

The Texas Department of Criminal Justice (the "department") received two requests from the same requestor for the rules and regulations pertaining to count times, bed checks, and staffing at a specified unit, turn out sheets for January 6, 2011 through January 8, 2011, and all documents, photographs, and videos pertaining to an incident involving a named individual. You state some information has been or will be made available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which provides in relevant 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.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has determined 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). The medical records must be released upon 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. Occ. Code §§ 159.004, .005. Medical records may be released only as provided under the MPA. *See* Open Records Decision No. 598 (1991) (stating statute governing access to a specific subset of information held by a governmental body prevails over generally applicable statute). You state the requestor has not submitted adequate written consent of the patient or another person authorized to act on the patient's behalf that complies with the MPA. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information

relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 508 (1988) (release of dates of prison transfer could impair security), 413 (1984) (release of sketch showing security measures to be used during execution would unduly interfere with law enforcement).

You state portions of the submitted information consist of staffing plans indicating whether particular posts are manned and counting schedules indicating the timing and frequency with which inmates are counted. You further state this information could be used to facilitate criminal activity or an escape. Based on your representations and our review, we agree the release of the information at issue would interfere with law enforcement and crime prevention. Accordingly, the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

Section 552.134 of the Government Code provides, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

Notwithstanding [s]ection . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

(1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate; [or]

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(1), (8). Upon review, we agree the remaining information constitutes information about inmates for purposes of section 552.134. However, the information at issue concerns injuries suffered by and alleged crimes involving the inmates. Thus, the department must release information concerning the nature of the inmate's injuries and basic

information concerning the alleged crimes. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. The department must withhold the remaining information pursuant to section 552.134 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The department may withhold the information you have marked under section 552.108(b)(1) of the Government Code. With the exception of information concerning the nature of the inmate's injuries and basic information concerning the alleged crimes, the department must withhold the remaining information pursuant to section 552.134(a) 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.

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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

Ref: ID# 455869

Enc. Submitted documents

c: Requestor
(w/o enclosures)