



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-13500

Dear Ms. Evans:

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# 463195 (GC No. 19762).

The City of Houston (the "city") received a request for all workplace injury paperwork for a specified time period pertaining to a named individual. You claim the submitted 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.

As you acknowledge, the city failed to meet the statutory deadlines imposed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this section to the submitted information. Further, we note some of the submitted information is subject to

sections 552.102 and 552.117 of the Government Code.¹ Because these sections can also provide compelling reasons to withhold information, we will address their applicability to 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. Section 552.101 encompasses section 402.083(a) of the Labor Code, which states “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”)] except as provided by this subtitle[.]” Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 (1989); *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, information in the possession of the city that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although you assert the submitted information is confidential pursuant to section 402.083, you provide no representation, and the documents do not reflect, that the city received these records from the division. Therefore, you have failed to demonstrate the applicability of section 402.083 to the information at issue. Thus, the city may not withhold any of the submitted information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which pertains to medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in 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.

Id. § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 470 (1987), 470 (1987).

Decision No. 598 (1991). 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). 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. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. ORD 565 at 7. Medical records may be released only as provided under the MPA. ORD 598. We have marked medical records that are subject to the MPA. The city must withhold this information under section 552.101 of the Government Code in conjunction with section 159.002 of the MPA unless it receives written consent for the release of the records that complies with sections 159.004 and 159.005 of the MPA.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). We have marked a birth date that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. See Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, if the individuals whose personal information we have marked timely requested confidentiality under section 552.024, the city must withhold their information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone number if the cellular service is not paid for by a governmental body. If the individuals at issue did not make a timely election under section 552.024, the city may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

In summary, the city must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with section 159.002 of the MPA unless it receives written consent for the release of the records that complies with sections 159.004 and 159.005 of the MPA. The city must withhold the date of birth we have marked under section 552.102(a) of the Government Code. If the individuals whose personal information we have marked timely requested confidentiality under section 552.024 of the Government Code, the city must withhold their information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone number if the cellular service is not paid for by a governmental body. The city must release the remaining 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 463195

Enc. Submitted documents

c: Requestor
(w/o enclosures)