



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 31, 2012

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2012-13838

Dear Ms. Pemberton:

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# 463658 (Killeen ID# W008288-061212).

The Killeen Police Department (the "department") received a request for all police reports, interviews, photographs, diagrams, videos, and any and all investigative reports pertaining to multiple rapes committed by a named individual, that occurred between June 1, 2010 and August 31, 2010. You claim that 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 representative sample of information.<sup>1</sup>

Initially, we note the submitted information contains medical records subject to the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code.<sup>2</sup> See Occ. Code §§ 151.001-168.202. Section 552.101 of the Government Code excepts from disclosure

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)

“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 MPA. Section 159.002 of the MPA provides, in 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). 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). 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). Upon review, we find the information we have marked under section 552.101 in conjunction with the MPA constitutes confidential medical records. Therefore, the department must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. In Open Records Decision No. 393, this office concluded generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the

identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also* *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy.

The request reveals the requestor knows identity of the sexual assault victim listed in report number 10-011803. We believe that, in this instance, withholding only identifying information of this victim from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the individual's privacy, the department must withhold police report number 10-011803 in its entirety, as well as the duplicate information related to this report contained in the remaining information, under section 552.101 in conjunction with common-law privacy. However, the request does not reveal the requestor knows the identity of any of the other sexual assault victims named in the remaining reports. Thus, the department may not withhold the remaining reports in their entirety on the basis of common-law privacy. Upon review, we agree some of the remaining submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked in the submitted documents and photographs under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the motor vehicle record information we have marked in the submitted documents and photographs under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The department must withhold the e-mail address we have marked under section 552.137 of the

Government Code, unless the owner of the address has affirmatively consented to its release.<sup>3</sup> *See id.* § 552.137(b).

In summary, the department must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must withhold report number 10-011803 in its entirety and the information we have marked in the submitted documents and photographs under section 552.101 in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked in the submitted documents and photographs under section 552.130 of the Government Code. Unless the owner has affirmatively consented to its release, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code. The remaining information must be released.<sup>4</sup>

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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/eb

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<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), which serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>The information being released contains social security numbers. Section 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 an attorney general decision under the Act. *See Gov't Code* § 552.147(b).

Ref: ID# 463658

Enc. Submitted documents

c: Requestor  
(w/o enclosures)