



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 5, 2012

Ms. Karin W. Riley  
Associate General Counsel  
The University of North Texas System  
1901 Main Street, Suite 216  
Dallas, Texas 75201-5222

OR2012-14034

Dear Ms. Riley:

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# 463911 (UNT PIR No. 000474).

The University of North Texas System (the "system") received a request for seven categories of information pertaining to medical student rotations and clerkships. You state you will make some of the requested information available to the requestor. You claim that 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 representative sample of information.<sup>1</sup>

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. This exception encompasses information that other statutes make confidential, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Medical records are confidential under section 159.002 of the MPA, which provides in part:

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

(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). This office also has concluded when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). 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. Occ. Code §§ 159.004, .005. Any release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). You contend a portion of the submitted information is confidential under the MPA. Upon review, we agree the information submitted in Samples 1, 2, 3, and 4 consists of medical records that are confidential under the MPA. Therefore, this information may only be released in accordance with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of

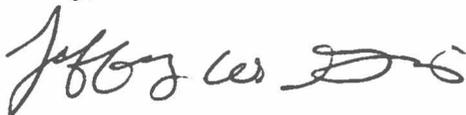
which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)* (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we agree the information submitted as Samples 5 and 6, which you have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the system must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the system may only release the medical records in Samples 1, 2, 3, and 4 if it receives proper consent pursuant to the MPA. The system must withhold the information in Samples 5 and 6 under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/tch

Ref: ID# 463911

Enc. Submitted documents

c: Requestor  
(w/o enclosures)