



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 11, 2012

Mr. John C. West  
General Counsel  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2012-14402

Dear Mr. West:

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# 464674 (PIR# 2012-00133).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the alleged criminal activity of the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.134 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The department

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<sup>1</sup>Although you claim section 552.101 in conjunction with section 552.102, we note section 552.101 does not encompass exceptions found within the Act.

received the request for information on June 20, 2012. You inform us the department observed a holiday on July 4, 2012. This office does not count holidays in calculating a governmental body's deadlines under section 552.301 of the Act. Thus, the department was required to request a decision from this office and state the exceptions that apply by July 5, 2012. We note you did not raise section 552.103 until July 11, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, the department failed to comply with section 552.301(b) in raising section 552.103 as an exception.

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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 is a discretionary exception that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, section 552.103 does not provide a compelling reason for non-disclosure, and the department may not withhold the submitted information on that basis. However, we will consider the applicability of the department's timely raised exceptions.

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 the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See Occ. Code* §§ 151.001–168.202. 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.

*Id.* § 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 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). This office also has concluded that 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 on receipt of the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent 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). Upon review, we find the information we have marked consists of the requestor's client's medical records and information obtained from those medical records. Although you seek to withhold this information under section 552.134 of the Government Code, we note the MPA's specific right of access provision prevails over the Act's general exception to disclosure. *See* Open Records Decision No. 598 (1991). In this instance, the requestor might have a right of access to his client's own medical record. Occ. Code §§ 159.004, .005. Accordingly, the medical records we have marked may be released only in accordance with the MPA.<sup>2</sup>

Section 552.134 of the Government Code provides, in 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.

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<sup>2</sup>As our ruling is dispositive for this information, we do not address your remaining claimed exceptions.

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

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.<sup>3</sup>

In summary, the medical records we have marked may be released only in accordance with the MPA. With the exception of basic information, the department must withhold the remaining information under section 552.134 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.

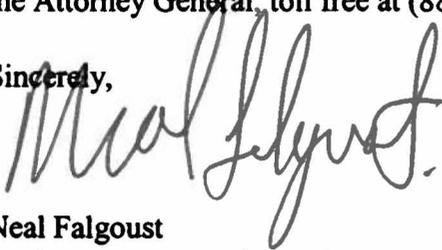
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining claimed exceptions.

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 black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 464674

Enc. Submitted documents

c: Requestor  
(w/o enclosures)