



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2012

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2012-14910

Dear Ms. Sims:

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# 466055.

The Lubbock Police Department (the "department") received a request for the medical records of a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor seeks only medical records for the named individual. You have submitted an incident report, which does not consist of or contain medical records. Thus, the portions of the submitted information that do not consist of medical records, which we have marked, are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release that information in response to the request.

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

¹Although you also raise section 552.108 of the Government Code, you have not provided any arguments to support this exception. Therefore, we do not address section 552.108. See Gov't Code §§ 552.301(e)(1)(A), .302.

Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). The responsive information relates to an investigation of alleged or suspected child abuse conducted by the department. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). Accordingly, we find the responsive information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the responsive information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In this instance, the requestor claims a right of access to the information at issue pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a). However, it is beyond the scope of the authority of this office to render a decision under HIPAA. *See* Gov’t Code § 552.301(a) (open records division’s authority is limited to determining, upon a governmental body’s request, whether requested information

falls within an exception to disclosure); Attorney General Opinion GA-0138 at 10 (2004). Accordingly, we do not address the applicability of HIPAA to the submitted information.

The requestor also claims a right of access to the information at issue pursuant to section 159.004(9) of the Occupations Code, which is contained within the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. The MPA governs medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002(b) of the MPA provides 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. *Id.* § 159.002(b). We note the responsive information consists of medical records subject to the MPA. Section 159.004(9) allows for the disclosure of confidential medical record information by a physician to health care personnel of a penal or other custodial institution in which patient is detained if disclosure is for sole purpose of providing health care to the patient. *See id.* § 159.004(9). Section 159.004(9) provides for the release of information by a physician. However, section 159.004(9) does not provide for release of information by the department. In this instance, the release of the information at issue would be by the department. Thus, we find the requestor has failed to demonstrate the applicability of section 159.004(9) to the information at issue and does not have a right of access to the information on that basis.

The requestor also claims a right of access to the information at issue pursuant to section 241.153 of the Health and Safety Code. Chapter 241 is also known as the Texas Hospital Licensing Law. *See* Health & Safety Code § 241.001. We note section 241.153 of the Health and Safety Code governs the disclosure of health care information *by a hospital or by an agent or employee of a hospital*. *See id.* § 241.153 (disclosure without written authorization). In this instance, the requestor has not demonstrated, and it is not otherwise clear to this office, how or why any information held by the department would be subject to section 241.153 of the Health and Safety Code. Thus, we find the requestor does not have a right of access to the information under section 241.153 to the information at issue.

The requestor also claims a right of access to the information at issue pursuant to section 611.004(a)(9) of the Health and Safety Code. Chapter 611 of the Health and Safety Code applies to mental health records. *See id.* ch. 611. Section 611.002 provides communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential. *Id.* § 611.002(a). Section 611.004(a)(9) provides for the disclosure of confidential mental health records by a professional to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody. *Id.* § 611.004(a)(9). In this instance, the information at issue does not consist of mental health records. Thus, chapter 611 of the Health and Safety Code is not applicable to the information at issue, and we find the requestor has failed to demonstrate she has a right of access to the information on that basis. Accordingly, as the requestor has not established any right of access to the information at issue, the department must withhold the responsive information under

section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 466055

Enc. Submitted documents

c: Requestor
(w/o enclosures)