



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2012

Mr. Neale Potts
Counsel for the City of Belton
Messer, Potts & Messer, P.C.
P.O. Box 969
Belton, Texas 76513

OR2012-16269

Dear Mr. Potts:

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# 467588.

The City of Belton (the "city"), which you represent, received a request for twenty categories of information pertaining to a specified incident. You state some responsive information will be released to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted information that does not pertain to the specified incident. Therefore, this information, which we have indicated in Exhibit F, is not responsive to the present request. The city need not release non-responsive information in response to the request, and this ruling will not address that information.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless it is "made

¹Although you also raise section 552.103, you make no arguments to support this exception. Accordingly, we find the city has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

confidential under [the Act] or other law [.]” Gov’t Code § 552.022(a)(17). We have marked the documents that are subject to section 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022(a)(17). Therefore, the marked court documents may not be withheld under section 552.108. However, because section 552.130 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception to the court-filed documents.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit, title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). We note the court-filed documents include a license plate number and vehicle identification number. Accordingly, the city must withhold this information, which we have marked, under section 552.130 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by statute, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See Occ. Code* §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant 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). 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).

Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring 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). Section 159.001 of the MPA defines “patient” as a person who consults with or is seen by a physician to receive medical care. *See* Occ. Code § 159.001(3). Under this definition, a deceased person cannot be a “patient” under section 159.002 of the MPA. *See* ORDs 487, 370, 343. Thus, the MPA is applicable only to records relating to a person who was alive at the time of diagnosis, evaluation, or treatment to which the records pertain.

Upon review, we find a portion of the submitted information, which we have marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. In this case, the patient at issue is deceased. When a patient is deceased, medical records may be released only on the signed consent of the personal representative of the deceased. *See* Occ. Code § 159.005(a)(5). The consent in that instance must specify (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. *See id.* §§ 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). Although you claim the marked medical records are excepted under section 552.108 of the Government Code, the MPA’s specific right of access provision prevails over the Act’s general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the medical records we have marked may only be released in accordance with the MPA.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which governs access to emergency medical service (“EMS”) records. *See* ORD 598. Section 773.091 provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex,

occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health & Safety Code. *See id.* §§ 773.091, .094. Upon review, we find the information we have marked consists of EMS records subject to section 773.091(b). We note information made confidential by section 773.091 may be released to any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf. *See id.* § 773.092(e)(4) (exceptions to confidentiality), .093 (consent for release); Open Records Decision No. 632 (1995). Section 773.093 provides a consent for release of EMS records must specify (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. When the patient is deceased, the patient's personal representative may consent to the release of the patient's records. Health & Safety Code § 773.093(a); *see also* ORD 632 (defining "personal representative" for purposes of section 773.093 of the Health and Safety Code). Although you claim the submitted EMS records are excepted under section 552.108 of the Government Code, as previously noted, general exceptions found in the Act cannot impinge on a statutory right of access to information. *See* ORDs 613 at 4, 451. Thus, if the city receives the required consent, the marked EMS records must be released in their entirety pursuant to sections 773.092 and 773.093 of the Health and Safety Code. If the city does not receive the required consent for release, then except for any information subject to section 773.091(g), the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining responsive information relates to a pending criminal investigation by the city's police department and release of this information could hinder the investigation and prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is generally applicable to the remaining responsive information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes, but is not limited to,

a sufficient portion of the narrative to encompass a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, which must be released, the city may withhold the remaining responsive, including the information subject to section 773.091(g) of the Health and Safety Code in the event the city does not receive the required consent, information under section 552.108(a)(1) of the Government Code.

In summary, the motor vehicle record information we have marked in the court-filed documents must be withheld under section 552.130 of the Government Code. The remaining information subject to section 552.022(a)(17) of the Government Code must be released. The medical records we have marked may only be released in accordance with the MPA. If the city receives the required consent, the marked EMS records must be released in their entirety pursuant to sections 773.092 and 773.093 of the Health and Safety Code. If the city does not receive the required consent for release, then except for any information subject to section 773.091(g), the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. With the exception of the basic information, which must be released, the city may withhold the remaining responsive information, including the information subject to section 773.091(g) of the Health and Safety Code in the event the city does not receive the required consent, under section 552.108(a)(1) 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, 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 467588

Enc. Submitted documents

c: Requestor
(w/o enclosures)