



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2013

Mr. Stephen E. Dubner
Law Office of Stephen E. Dubner
3000 South Stemmons Freeway
Lake Dallas, Texas 75065

OR2013-01900

Dear Mr. Dubner:

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# 479008.

The Pilot Point Independent School District (the "district"), which you represent, received a request for individual and cumulative results of student drug testing performed by the district during the 2012-2013 school year. You state the district is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim 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 information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we understand the requestor to assert the district did not comply with its procedural obligations under section 552.301 of the Government Code because the district "has not responded to my request within 10 business days as required by law" and because the requestor states he has "received no response to my request, although this is the 14th day

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

since I filed it[.]” Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *Id.* § 552.301(b). In addition, pursuant to section 552.301(d), a governmental body must provide the requestor with a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general and a copy of the governmental body’s written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The district received the request for information on November 16, 2012. The district informs us it was closed for business from November 19 through 23, 2013. Thus, the district’s ten-business-day deadline under section 552.301(b) was December 7, 2013. The envelope containing the district’s request for a ruling is postmarked December 6, 2013. *See* Gov’t Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we find the district complied with the procedural requirements of section 552.301(b) in requesting a decision from this office. Further, the request for a ruling reveals it was copied to the requestor. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely on the facts alleged to us by the governmental body requesting our opinion or on those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Based on the documentation the district supplied, we find the district complied with the procedural requirements of section 552.301(d) in copying the requestor on the correspondence requesting this ruling. Thus, we will consider the district’s arguments to withhold the submitted information from release under the Act.

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 section encompasses information protected by other statutes, including 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 relevant part the following:

- (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.

Occupation Code § 159.002(a)-(c). You contend the submitted information, which consists of a report of the results of drug tests, is confidential under the MPA. You state the submitted documents “were created by a physician or someone under the supervision of a physician.” However, section 159.001 of the MPA defines “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” *Id.* § 159.001(3). Because the individuals at issue did not receive medical care in the administration of the drug tests, none are a patient for purposes of section 159.002. Thus, we find you have not demonstrated the submitted information consists of a communication between a physician and a patient; records of the identity, diagnosis, evaluation, or treatment of a patient; or information obtained from such communications or records. *See id.* § 159.002(a)-(c). Therefore, the district may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of section 159.002 of the MPA. Instead, the district must release the submitted information to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 479008

Enc. Submitted documents

c: Requestor
(w/o enclosures)