



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2014

Ms. Pat McGowan
City Attorney
City of Fredericksburg
P.O. Box 836
Fredericksburg, Texas 78624

OR2014-00625

Dear Ms. McGowan:

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# 510558.

The Fredericksburg Police Department (the "department"), which you represent, received a request for the personnel file of a named officer. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted one document from the personnel file of the named officer for our review. We assume, to the extent any additional responsive information existed on the date the department received the request, the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹Although you do not cite to section 552.101 of the Government Code in your brief to this office, we understand you to raise section 552.101 based on the substance of your arguments.

Gov't Code § 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. 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.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. 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). Upon review, we find the submitted information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with the MPA.²

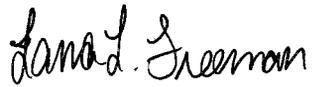
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Lana L. Freeman".

Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 510558

Enc. Submitted documents

c: Requestor
(w/o enclosures)