



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2014

Mr. William Schultz
Assistant District Attorney
Civil Division
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2014-12846

Dear Mr. Schultz:

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# 532843.

The Denton County Health Department (the "county") received a request for specified information pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the Baylor Medical Center at Grapevine ("Baylor"). Accordingly, you state, and provide documentation showing, you notified Baylor of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 encompasses information made confidential by other statutes, such as section 81.046 of the Health and Safety Code, which provides in part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the [Texas Department of State Health Services] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

(c) Medical or epidemiological information may be released:

...

(2) with the consent of each person identified in the information[.]

Health & Safety Code § 81.046(a), (b), (c)(2). In Open Records Decision No. 577 (1990), this office concluded any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception set out in the statute applies. *See* ORD 577; Health & Safety Code § 81.046(b)-(d), (f). We understand the county acquired the submitted information in the course of investigating a suspected case of shigella. Based on your representations and our review, we agree the submitted information is subject to section 81.046. The exceptions to confidentiality in subsections 81.046(d) and 81.046(f) are not applicable in this instance.

However, the requestor is the legal representative of the individual identified in the information at issue and is asking for the information on the client’s behalf. *See* Health & Safety Code § 81.046(c)(2). In Open Records Decision No. 577, this office concluded section 81.046(c)(2), when read together with the statutory predecessor to section 552.023 of the Government Code, requires a county health department to release to a requestor any medical or epidemiological information it has concerning an individual who has consented to the release. ORD 577 at 3. In this instance, the requestor has obtained an authorization for the release of medical information from her client. Therefore, we find the requestor has a right of access under section 81.046(c)(2) to medical and epidemiological information pertaining to her client. Accordingly, we find the county must generally release any medical or epidemiological information that pertains to the requestor’s client. *See* Health & Safety

Code § 81.046(c)(2) (providing that medical or epidemiological information may be released with the consent of each person identified in the information); *see also* ORD 577 (concluding section 81.046 permits health department to provide requestor with medical or epidemiological information concerning person who signed release or any member of her family for whom she had right to give consent). The county must withhold any remaining information under section 552.101 in conjunction with section 81.046 of the Health and Safety Code.

We note some of the submitted information consists of medical records of the requestor's client that are subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 552.101 also encompasses the MPA, and 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.

Occ. Code § 159.002(a)-(b). Information 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 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). We have also found when a file is created as the result of a hospital stay, all the documents in the file relating 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). Accordingly, the county must generally withhold the medical records of the requestor's client, which we have marked, under section 552.101 in conjunction with the MPA.

However, the medical records subject to the MPA also contain medical or epidemiological information subject to the release provision of section 81.046(c)(2) of the Health and Safety Code. Thus, there is a conflict between the release provided by section 81.046(c)(2) and the confidentiality of the medical records under the MPA. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general provision, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as

exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). The MPA is a more specific statute than section 81.046 because the MPA applies specifically to medical records, while section 81.046 applies generally to all records created as part of an investigation into cases of diseases or health conditions. Although the release provisions in section 81.046 were later enacted, we have no indication the legislature intended section 81.046 to prevail over the MPA.¹ Therefore, the county must withhold the marked medical records under section 552.101 in conjunction with the MPA.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Baylor explaining why the submitted information should not be released. Therefore, we have no basis to conclude Baylor has a protected interest in the submitted information. Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county may not withhold the remaining information on the basis of any interest Baylor may have in the information.

In summary, the county must (1) withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA, (2) release to this requestor the medical or epidemiological information in the remaining information pertaining to the requestor's client, and (3) withhold any remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety 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.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

¹See Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 31 (enacting MPA); Act of June 2, 1987, 70th Leg., R.S., ch. 543, § 10, 1987 Tex. Gen. Laws 2176, 2180-81 (enacting statutory predecessor to Health & Safety Code § 81.046(c)(2)).

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 black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 532842

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Baylor Medical Center at Grapevine
1830 West College
Grapevine, Texas 76051
(w/o enclosures)