



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 19, 1997

Ms. Doreen McGookey  
Assistant City Attorney  
City of Dallas  
501 Police and Courts Building  
Dallas, Texas 75201

OR97-0396

Dear Ms. McGookey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103847.

The Dallas Police Department (the "department") received a request for "all Internal Affairs Division and Public Integrity Division files involving allegations of assault by police officers during 1995 and 1996." The requestor clarified that the information sought related to "cases where a criminal allegation of assault or aggravated assault was made against a Dallas officer by a family member." You assert that certain information responsive to the request is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered your arguments and have reviewed the information submitted.<sup>2</sup>

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Exhibit 1 contains medical records which you assert are confidential by law under the Medical Practice Act, section 5.08 of Article 4495b of the Texas Revised Civil Statutes. The Medical Practice Act (the

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<sup>1</sup>Although you claimed section 552.103 to protect the information from disclosure, you did not assert any arguments for withholding the information under that section. Therefore, we conclude you may not withhold the requested information under section 552.103.

<sup>2</sup>We assume the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

“MPA”) protects from disclosure “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” V.T.C.S. art. 4495b, § 5.08(b). This office has concluded that the protection afforded by section 4495b extends only to records either created by a physician or someone under the supervision of a physician. See Open Records Decision Nos. 487 (1988), 370 (1983), 343 (1982). After reviewing the medical records contained in Exhibit 1, we are unable to determine whether these records were created or maintained by a physician or someone under a physician’s supervision.

We note, however, that these medical records are from Medical City Dallas Hospital. Subchapter G of Chapter 241 of the Health and Safety Code provides for the disclosure of health care information in the possession of hospitals. Section 241.152(a) of the Health and Safety Code provides that “a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient without the written authorization of the patient or the patient’s legally authorized representative.” “Health care information” means “information recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient.” Health & Safety Code § 241.151(1). Section 241.153 provides several instances in which a patient’s health care information may be disclosed without the patient’s written authorization. One such instance is if the disclosure is to “a federal, state, or local government agency or authority to the extent authorized or required by law.” *Id.* § 241.153(3). We assume that the health care information was released by Medical City Dallas Hospital to the department in compliance with this provision. There is no provision authorizing the department to re-release the health care information. Therefore, it remains confidential under section 241.152 of the Health and Safety Code and may be withheld under section 552.101 of the Government Code.

You next contend information contained in Exhibit 2 is confidential under section 611.002 of the Health and Safety Code.<sup>3</sup> Section 611.002 provides in pertinent part:

- (a) 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.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

After reviewing the documents contained in Exhibit 2, we conclude that some of them are clearly records of the diagnosis, evaluation, or treatment of a patient that are created or

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<sup>3</sup>Although you refer to “Exhibit 2,” the information submitted to this office did not contain a sheet labeled “Exhibit 2” which would delineate those records you deem confidential under 611.002. Thus, we are assuming the information found between the records from Medical City Dallas Hospital and the sheet marked “Exhibit 3” are the records you refer to as contained in Exhibit 2.

maintained by a professional.<sup>4</sup> They are therefore within the scope of section 611.002, and the department can only disclose the records "to the extent that disclosure is consistent with the authorized purposes for which the [department] obtained the information." Health & Safety Code § 611.004(d).

Other information in Exhibit 2 identifies prescription medications taken by an individual. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. Disclosure of what kinds of prescription drugs a person is taking is protected by common law privacy. Open Records Decision No. 455 (1987). The department must therefore withhold the information in Exhibit 2 containing references to prescription drugs. We have marked this information with a red tag.

Exhibit 2 also contains the results of a drug screen. This office has recognized a privacy interest in drug test results of public employees. See Open Records Decision No. 455 (1987) at 5 (citing *Shoemaker v. Handel*, 619 F. Supp. 1089 (D.N.J. 1985), *aff'd*, 795 F.2d 1136 (3rd Cir. 1986), Open Records Decision No. 594 (1991) (suggesting identification of individual as having tested positive for use of illegal drugs may raise privacy issues), *cf.* Open Records Decision No. 343 (1982) (medical information of patient who is not public employee that relates to drug overdose or acute alcohol intoxication is protected by constitutional or common-law right of privacy); Health & Safety Code § 611.002 (making confidential records of treatment for substance abuse). Given that the subject of the drug test was the wife of a public employee, we conclude that the results of the drug screen are protected under section 552.101 and must not be released.

Finally with regard to Exhibit 2, a document contained therein refers to certain medical conditions identified with a specific individual. We are not able to determine whether this record was created or maintained by a physician, or someone acting under a physician's supervision, or whether it is a hospital record. If it was created or maintained by a physician, or someone acting under a physician's supervision, or is a hospital record, then the record must be withheld in accordance with section 5.08 of the MPA or subchapter G of Chapter 241 of the Health and Safety Code. If it was neither, then the information must be released. We have marked this information with a green tag.

You contend any information contained in Exhibit 3 referring to an adult receiving psychological care or treatment, or any type of family therapy, is excepted from disclosure by

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<sup>4</sup>Section 611.001 of the Health and Safety Code defines "professional" to include "a person authorized to practice medicine in any state or nation" and "a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder."

common law privacy. The only information in Exhibit 3 is contained in a document with the heading "Investigative Notes." This document contains communications from a patient to a physician which are confidential under section 5.08 of the MPA, and information that is protected by common-law privacy.<sup>5</sup> We have marked the information in Exhibit 3 that must be withheld under section 552.101. The rest of the information in Exhibit 3 must be released.

You assert that photographs of injuries sustained by victims of family violence are highly intimate and embarrassing and should be withheld from disclosure under a common-law right of privacy. After reviewing the photographs, we agree that they are highly intimate and embarrassing and of no legitimate concern to the public, and therefore they must be withheld under section 552.101.

Finally, you contend that information contained in exhibit 4 is excepted from disclosure under section 552.108. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the records in exhibit 4 clearly come within the purview of section 552.108, we conclude that most of this information may be withheld under this section. *But see Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982) (where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable).

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.

Finally, we note that the request in this case seeks information which would reveal whether a police officer has family members. Section 552.117(2) requires that a governmental body withhold information revealing the home addresses, telephone numbers, and social security numbers of peace officers, and information that reveals whether a peace officer has family members. Therefore, the city must redact any information in the requested records which would reveal or tend to reveal the identities of any officer or any members of his or her family, and which would not otherwise be excepted from disclosure under the other sections of the Government Code you raise.

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<sup>5</sup>Section 5.08(c) of the MPA provides that "[a]ny person who receives information from confidential communications or records . . . may not disclose the information except to the extent the disclosure is consistent with the authorized purposes for which the information was first obtained."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 103847

Enclosures: Marked documents

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(w/o enclosures)