



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1998

Mr. Saul Pedregon
Assistant City Attorney
City of Dallas
2014 Main Street
Dallas, Texas 75201

OR98-1633

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116869.

The City of Dallas (the "city") received two requests for Internal Affairs Investigation File No. 97-280. You assert that the requested information is excepted from required public disclosure based on sections 552.101, 552.103 and 552.108 of the Government Code. We have reviewed the information and considered the exceptions you raise.

Section 552.108 of the Government Code reads in part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You inform us that the information pertains to pending criminal cases. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." Section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). The city may withhold the requested records from disclosure based on section 552.108 with the exception of the front

page offense report information and the medical records, as we will explain.¹

The records include an offense report. Section 552.103 does not apply to front page offense report information. *See* Open Records Decision No. 362 (1983). Nor does section 552.108 apply to such information. Gov't Code § 552.108(c); *see 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).

The information includes "Dallas County Medical Records" that pertain to one of the requestors. The Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, generally makes confidential "[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). We will assume that the records at issue were created or maintained by a physician. Section 5.08 of the MPA grants a patient access to his own medical records held by a physician, unless "the physician determines that access to the information would be harmful to the physical mental or emotional health of the patient." *Id.* § 5.08(k); *see id.* § 5.08(h)(5), (j)(1). In this case, the patient gave her permission for the Dallas Sheriff's Office to release her medical records to the Internal Affairs Division of the Dallas Police Department. Section 5.08(k) requires the physician to determine that access to the medical records would not harm the physical, mental, or emotional health of the patient. As the physician at the Dallas County Jail released the records to the Dallas Police Department, we presume that the physician made the section 5.08(k) determination. *See* Open Records Decision No. 565 (1990) at 7. Where the MPA grants access to medical records, the Open Records Act's exceptions to disclosure, including sections 552.103 and 552.108, may not be invoked to deny access. *See* Open Records Decision No. 598 (1991). Thus, the city must release the medical records to the requestor to whom they pertain, but must withhold the records from the other requestor.

We are resolving this matter with this 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 may 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,



Kay Hastings
Assistant Attorney General
Open Records Division

¹If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

KHH/mjc

Ref.: ID# 116869

Enclosures: Submitted documents

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