



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2006

Ms. Mimi Hastings Shelton
Associate General Counsel
Office of the General Counsel
Texas Mutual Insurance Company
6210 East Highway 290
Austin, Texas 78723-1098

OR2006-03451

Dear Ms. Shelton:

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# 245653.

The Texas Mutual Insurance Company (the "company") received a request for "any and all Workers' Comp. documents and tangible evidence relating to the Workers' Comp. file [of a named individual] including copies of medical billing and business records[.]" You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the Occupations Code provides in pertinent part:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1938), 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.

(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 (b), (c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that 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 further found that 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).

Medical records may be released only as provided under the MPA. Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision Nos. 598 (1991), 565 at 7 (1990). The MPA permits disclosure of MPA records to the patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Occ. Code §§ 159.004, .005. We have reviewed the submitted information and find that some of the documents are medical records, which we have marked. However, we note that the requestor is an attorney acting on behalf of his client, whose medical records are at issue. Thus, the company must release the marked medical records only in accordance with the MPA. *See* Open Records Decision No. 598 (1991). However, we find that you have failed to explain how any of the remaining submitted information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician for purposes of the MPA. Thus, the company may not withhold the remaining information under the MPA.

Section 552.101 of the Government Code also encompasses section 201.402 of the Occupations Code. Chapter 201 of the Occupations Code governs the practice of chiropractic treatment. Section 201.402 provides in part:

(a) Communications between a chiropractor and a patient relating to or in connection with any professional services provided by a chiropractor to the patient are confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor are confidential and privileged and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from the confidential communications or records, excluding a person listed in Section 201.404(a) 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 § 201.402(a)-(c). Chapter 201 includes exceptions to confidentiality and consent provisions. *See id.* §§ 201.403, .404, .405. Although you raise chapter 201 of the Occupations Code, you have failed to explain how section 201.402 applies to any portion of the remaining information. Thus, the company may not withhold any portion of the submitted information under chapter 201 of the Occupations Code.

You also raise articles 28B.02 and 28B.04 of the Insurance Code which you state require an insurance company to obtain authorization to disclose any nonpublic personal health information. However, article 28B.02 was repealed effective April 1, 2005. *See* Acts 2003, 78th Leg., ch. 1274, § 26(b)(4) *repealing* Acts 2001, 77th Leg., ch. 1511, § 2. We therefore conclude that the company may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with article 28B.02 of the Insurance Code.

In summary, the medical records we have marked may only be released in accordance with the MPA. The remaining submitted information must be released.²

The company also requests a previous determination that medical records, confidential medical information, and medical bills contained in the company's file are exempt from public disclosure under the Act. We decline to issue a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; and must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

²We note that the documents being released contain confidential information to which the requestor has a special right of access. Gov't Code § 552.023 (person has special right of access to information held by governmental body that relates to the person and that is protected from public disclosure by laws intended to protect person's privacy interests). Because such information may be confidential with respect to the general public, in the event the company receives a request for this information from an individual who would not have a special right of access, it should request another ruling from this office.

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 342 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/krl

Ref: ID# 245653

Enc. Submitted documents

c: Mr. Bill Harrison
Provost Umphrey, L.L.P.
1560 West Bay Area Blvd., Suite 355
Friendswood, Texas 77546-2667
(w/o enclosures)