



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2006

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th floor
El Paso, Texas 79901

OR2006-03664

Dear Mr. Rodriguez:

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# 245952.

The El Paso Police Department (the "department") received a request for all records related to any and all investigations made by the department regarding a named individual, including records related to a recent arrest. You state that you have released some information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that Exhibit D contains medical records, access to which is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

- (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. Open Records Decision No. 598 (1991). Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the medical records in Exhibit D. These medical records may only be released in accordance with the MPA. *See* Occ. Code § 159.004(1) (allowing disclosure of confidential medical records to a governmental agency where disclosure is required or authorized by law).

Next, we note that the requestor is an investigator with the Texas Department of State Health Services (“TDSHS”), who has informed the department that TDSHS seeks the information pursuant to an investigation conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by TDSHS. *See* Health & Safety Code § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by TDSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [TDSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification is considered to have given consent to a representative of [TDSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the [Texas Board of Health].

Health & Safety Code § 773.0612. The named individual at issue is a certified emergency medical technician. Upon review, we find that the remaining information is directly related

to emergency medical services personnel for purposes of section 773.0612(a). The information you have provided reflects that TDSHS intends to use the requested information for purposes consistent with chapter 773 of the Health and Safety Code. We therefore determine that the requestor has a statutory right of access to most of the information under section 773.0612(a) of the Health and Safety Code. Because the requestor in this instance has a statutory right of access to the information at issue, the department may not withhold this information from the requestor pursuant to section 552.101 in conjunction with common law privacy, section 552.108 or section 552.130. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act.). Further, we find the information may not be withheld from the requestor, in this instance, pursuant to section 773.091 of the Health and Safety Code or section 560.002 of the Government Code. *See* Health & Safety Code § 773.092(e)(2) (providing for release of confidential EMS records to governmental agencies where disclosure is required or authorized by law); Gov't Code § 560.002(1)(B) (authorizing release of biometric identifier where disclosure is required or permitted by state statute other than chapter 552). Consequently, the department must release the remaining submitted information to the requestor, except as noted below. We note that information obtained by TDSHS pursuant to section 773.0612(a) is confidential in the hands of TDSHS. *See* Health & Safety Code § 773.0612(b).

The department also argues that the originating telephone number and address of the 9-1-1 caller contained in Exhibit E is excepted under section 772.318 of the Health and Safety Code. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Health & Safety Code § 772.318(c). We understand the City of El Paso to be part of an emergency communication district that was established under section 772.318.¹ Thus, based on your representations and our review, we determine that the telephone number and address you have marked in Exhibit E are excepted from disclosure under section 772.318 of the Health and Safety Code.

However, as noted above, section 773.0612 provides the requestor a statutory right of access to certain information directly pertaining to emergency medical services personnel, including the document submitted as Exhibit E. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to 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(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 773.0612 generally allows the requestor access to information relating to emergency medical services personnel,

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

section 772.318 of the Health and Safety Code specifically protects the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. We therefore conclude that, notwithstanding the provisions of section 773.0612, the department must withhold the marked address and telephone number in Exhibit E pursuant to section 772.318. *See also* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission).

In summary, the medical records in Exhibit D may only be released in accordance with the MPA. The telephone number and address you have marked in Exhibit E are excepted from disclosure under section 772.318 of the Health and Safety Code. The remaining information must be released to the requestor.²

This letter ruling is limited to the particular records 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 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 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).

²Because the requestor has a special right of access to information that is confidential with respect to the general public, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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*, 842 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 245952

Enc. Submitted documents

c: Mr. Raul Guerrero
EMS Investigator
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756
(w/o enclosures)