



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2006

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

OR2006-05864

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# 250752.

Texas Mutual Insurance Company (the "company") received a request for "[c]opies of any and all filings, investigations, reports, medical records, letters memoranda or any other documents involving or relating to the Worker's Compensation claim(s) of [a named individual]."<sup>1</sup> 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 information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

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. This section encompasses information made confidential by other statutes. You claim that the submitted documents include medical records, access to which is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 provides in pertinent part:

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<sup>1</sup>You inform us that the company sought and received clarification from the requestor regarding her request. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request)

(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 id.* §§ 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). 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 that are subject to the MPA. These medical records may only be released in accordance with the MPA. *See* Occ. Code § 159.003(a) (4) (providing that otherwise confidential medical records may be disclosed in a civil action or administrative proceeding brought by patient or person on patient's behalf, if patient or person is attempting to recover monetary damages for physical or mental condition including patient's death).

We note that the requestor asserts that rules 509 and 510 of the Texas Rules of Evidence provide "exception[s] to the confidentiality of a patient's medical records in a situation which the patient himself has placed these at issue." As the requestor is currently defending a personal injury lawsuit in which the named individual is a plaintiff, she contends that the submitted medical records are not confidential pursuant to rules 509 and 510. We note that this office generally does not address discovery and evidentiary rules that may or may not be applicable to information submitted to our office by a governmental body. *See* Open Records Decision No. 416 (1984) (finding that even if evidentiary rule specified that certain information may not be publicly released during trial, it would have no effect on disclosability under Act). What information can or cannot be introduced during trial and what information can or cannot be released to the public under the Act are two entirely different issues. *Id.* at 7. Accordingly, we do not address the applicability of rules 509 and 510 to the submitted information.

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. Upon review, we agree that some of the submitted information, which we have marked, is subject to section 201.402. Thus, the company may release this information only if chapter 201 of the Occupations Code permits you to do so.

You also claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 10 of article 5.76-3 of the Insurance Code. Section 10(a) provides as follows:

Information maintained in the investigation files of the company is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the division of workers' compensation of the department;
- (3) on a judicial determination of good cause;
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws or this or another state of the United States.

Ins. Code art. 5.76-3, § 10(a). Section 10(b) further provides that "Company investigation files are not open records for purposes of the open records law, Chapter 552, Government Code." *Id.* art. 5.76-3, § 10(b). You claim that some of the submitted information was created and maintained by the company's Special Investigations Division as part of a fraud investigation of the named individual as authorized by section 9 of article 5.76-3 of the

Insurance Code. *See id.* art. 5.76-3, § 9(b) (providing that company may conduct investigations of cases of fraud). Based on your representations and our review, we conclude that the company must withhold the submitted information maintained in the company's investigation files under section 552.101 in conjunction with section 10(a) of article 5.76-3 of the Insurance Code.

Section 552.101 of the Government Code also encompasses the common law right to privacy. Information must be withheld from disclosure under the common law right to privacy when it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information that the company must withhold under section 552.101 in conjunction with common law privacy.

We note that the remaining documents include insurance policy numbers. Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>2</sup> Gov't Code § 552.136. Accordingly, the company must withhold the insurance policy numbers we have marked pursuant to section 552.136.

The remaining information also includes a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the company must withhold the submitted social security number under section 552.147.<sup>3</sup>

In summary, we conclude as follows: (1) the marked medical records may only be released in accordance with the MPA; (2) the marked chiropractic records may only be released in accordance with chapter 201 of the Occupations Code; (3) the information maintained in the

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<sup>2</sup> This office will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup> We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

company's investigation files must be withheld under section 552.101 of the Government Code in conjunction with section 10(a) of article 5.76-3 of the Insurance Code; (4) the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common law privacy; (5) the marked insurance policy numbers must be withheld under section 552.136 of the Government Code; and (6) the submitted social security number must be withheld under section 552.147 of the Government Code. The remaining submitted information must be released.

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).

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 250752

Enc. Submitted documents

c: Ms. Angela H. Robinson  
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(w/o enclosures)