



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2007

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2007-16159

Dear Ms. Longoria:

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# 296822.

The University of Texas Health Science Center at San Antonio ("the university") received a request for the "full files" relating to certain incidents. You state that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

You also ask whether the university may release a redacted copy of a document that you state is a hand-written version of an "Employer's First Report of Injury or Illness." You explain that the university is willing to release the document in question after redacting information that would tend to identify the injured person to whom the document pertains. We note that the request for information reflects that the requestor does not seek access to information that would tend to identify the injured person. Therefore, based on your representations and our review of the request, we find that the information that would tend to identify the injured person is not responsive to this request. You have marked what you contend is the identifying information that should be redacted from the document in question. You state that "[d]epending on the size of the department and the number of employees in a given lab, any or some of this information in combination could tend to reveal the identity of the

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

injured person.” Based on your representations and our review of the information that you propose to redact, we conclude that most of that information could tend to identify the injured person. Thus, the identifying information is not responsive to this request, and it need not be released. We also conclude, however, that the information that we have marked does not tend to identify the injured person. As you claim no exception to the disclosure of the information that we have marked, that information must not be redacted from the document that you release.

We next note that a governmental body that asks this office to decide whether requested information is excepted from public disclosure must comply with the deadlines prescribed by section 552.301 of the Government Code. *See* Gov’t Code § 552.301. If the governmental body fails to do so, the requested information is presumed to be public and must be released unless there is a compelling reason to withhold any of the information from disclosure. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). This request for a decision presents issues with regard to the university’s compliance with section 552.301. However, because the university’s claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we need not determine whether the university has complied with section 552.301 in requesting this decision.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(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). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient’s signed, written consent, provided that the consent specifies (1) the information to be covered

by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.,002(c); Open Records Decision No. 565 at 7 (1990). We find that some of the submitted information consists of medical records that are confidential under the MPA. The university must withhold that information, which we have marked, unless it receives consent for release of the information that complies with sections 159.004 and 159.005 of the MPA. The remaining document is not confidential under the MPA and must be released to the requestor.

In summary: (1) except for the information that would tend to identify the injured person, the university must release the “Employer’s First Report of Injury or Illness,” including the information that we have marked for release; and (2) the university must withhold the marked medical records that are confidential under the MPA unless the university receives consent for release that complies with sections 159.004 and 159.005 of the MPA. The remaining document must be released.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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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,

²We note that the remaining document contains the injured person’s name. Because the requestor does not seek access to that information, which we have marked, it is not responsive to the request and need not be released.

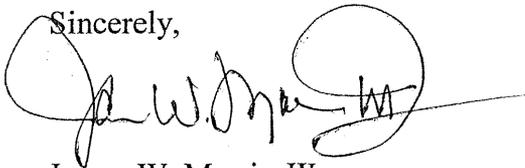
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 296822 (Request #24)

Enc: Submitted documents

c: Mr. Edward Hammond
The Sunshine Project
P.O. Box 41987
Austin, Texas 78704
(w/o enclosures)