



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2009

Ms. Linda M. Champion
Assistant City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2009-05623

Dear Ms. Champion:

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# 341053.

The City of Victoria (the "city") received a request for any reports involving a specified address or a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. You raise section 552.101 in conjunction with the doctrine of common-law privacy, which protects information that (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 to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

Upon review, we conclude that the report we have marked pertains to this type of incident, and we note the requestor knows the identity of the individual at issue as well as the nature of the incident. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Although you seek to withhold the remaining submitted reports in their entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the remaining reports must be withheld in their entirety on the basis of common-law privacy. However, we have marked information in the remaining submitted reports that must be withheld on this basis.

We note, however, that the requestor is the wife of the individual to whom the submitted information pertains. As such, the requestor may have a special right of access to the submitted information as the authorized representative of the individual to whom it pertains. *See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative requests information concerning that individual).*¹ If the requestor has a right of access to the submitted information as the individual's authorized representative under section 552.023, then the city may not withhold any of the submitted information from the requestor on privacy grounds under section 552.101 and must release this information to the requestor. If the requestor does not have a right of access under section 552.023, then the city must withhold the report we have marked in its entirety, as well as the information we have marked in the remaining reports, under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you argue some of the submitted information is confidential under section 552.101 in conjunction with the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. Section 552.101 of the Government Code encompasses information protected by other statutes. Section 159.002 of the MPA provides in pertinent part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a), (b), (c). 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). Upon review, we conclude none of the submitted information consists of medical records that are subject to the MPA. Thus, the city may not withhold any of the submitted information under the MPA.

In summary, if the requestor is acting as the authorized representative of her husband, then the city must release the submitted information in its entirety to the requestor.² If the requestor is not acting as the authorized representative of her husband, then the city must withhold the report we have marked in its entirety, as well as the remaining information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy, but must release the remaining submitted information.

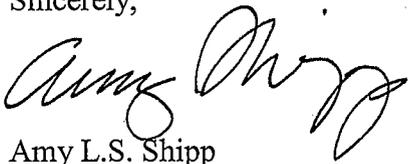
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

²As our ruling is dispositive, we do not address your argument under section 552.130, except to note that in the event that the requestor is acting as the authorized representative of her husband, then the information to be released to her includes her husband's Texas motor vehicle record information, which would ordinarily be withheld under section 552.130. However, because this information pertains to the requestor's husband, it may not be withheld in this instance because section 552.130 also protects personal privacy. *See* Gov't Code § 552.023; ORD 481. If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Shipp". The signature is fluid and cursive, with the first name "Amy" written in a larger, more prominent script than the last name "Shipp".

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 341053

Enc. Submitted documents

cc: Requestor
(w/o enclosures)