



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2009

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-07064

Dear Mr. Mann:

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# 343996 (GCA09-0202).

The Garland Police Department (the "department") received a request for a specified incident report. You state that the department has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that section 552.101 of the Government Code is applicable in this instance.¹ 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 made confidential by other statutes. The submitted information contains the requestor's medical records, which 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:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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 receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the 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 a portion of the submitted information consists of medical records that fall within the scope of the MPA. Thus, the department must withhold this information, which we have marked, under section 159.002 of the MPA, unless it receives the required written consent for release of the information under sections 159.004 and 159.005 of the MPA.²

We will now address your argument against disclosure of the remaining information. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an ongoing investigation. Based on your representation and our review of the submitted information, we conclude that the release of the remaining information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

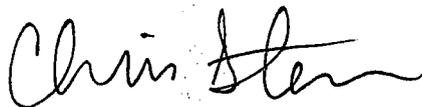
²As our ruling is dispositive of this information, we need not address your argument against its disclosure.

In summary, we have marked the records that may only be disclosed in accordance with the MPA. The department may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.

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, 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 343996

Enc. Submitted documents

c: Requestor
(w/o enclosures)