



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 10, 2009

Mr. Jeffrey L. Moore  
Attorney for City of Forney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2009-07989

Dear Mr. Moore:

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# 345615.

The City of Forney (the "city"), which you represent, received a request for all information regarding a specified police motorcycle accident. You state the city has provided some of the requested information to the requestor. You claim the submitted workers' compensation documents and medical records are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information does not pertain to the accident or police officer specified in the request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need 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 protected by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides, in 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 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.

*Id.* § 159.002(a)-(c). Information 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 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 must be released upon the patient's signed, written consent, provided 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. Occ. Code §§ 159.004, .005. You claim the marked return to work orders completed by a physician are confidential under the MPA. Upon review, we agree the return to work orders constitute confidential medical records. The marked medical records may only be released in accordance with the MPA.<sup>1</sup> ORD 598.

Section 552.101 also encompasses section 402.083(a) of the Labor Code, which states "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation of the Texas Department of Insurance (the "division")] except as provided by this subtitle[.]" Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 (1989); *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, information in the possession of the city that was not obtained from the division may not be withheld on the basis of section 402.083(a).

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against disclosure for this information.

You claim the remaining information, which consists of workers' compensation documents, is confidential under section 402.083(a). Upon review, we agree the notice to employer letter sent to the city by the division regarding an injured employee is confidential under section 402.083(a) of the Labor Code, and must be withheld under section 552.101 of the Government Code on that basis. However, although the remaining employer rights and responsibilities documents were also obtained from the division, they consist only of general information that does not specifically pertain to an injured employee. Furthermore, the rest of the remaining documents were created by the city to either document the employee's injury or to show the workers' compensation payments made to the injured employee. Thus, we find you have failed to demonstrate how the remaining documents are confidential under section 402.083(a). Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code.

You claim portions of the remaining documents are protected under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>2</sup> Gov't Code § 552.117(a)(2). The city must withhold the personal information of the peace officer specified in the request we have marked under section 552.117(a)(2) of the Government Code.<sup>3</sup>

In summary, the marked medical records may only be released in accordance with the MPA. The city must withhold the marked peace officer's personal information under section 552.117(a)(2) of the Government Code. The remaining information must be released.

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](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

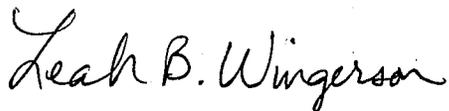
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<sup>2</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

<sup>3</sup>We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes the city to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.

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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 345615

Enc. Submitted documents

c: Requestor  
(w/o enclosures)