



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2009

Mr. Scott A. Kelly
Interim General Counsel
The Texas A&M University System
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845-3424

OR2009-09480

Dear Mr. Kelly:

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# 348487.

Texas A&M University (the "university") received a request for all information pertaining to a specified incident involving a named individual. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(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 subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends 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). 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). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The records at issue contain medical records and information, including diagnosis codes and descriptions of conditions, that appears to have been directly obtained from medical records and communications. Thus, upon review, we find that the entirety of Exhibit B-1 and Part B of Exhibit B-2, as well as the portions of Exhibit B-2, Part C we have marked, constitute medical records or information obtained from medical records that may only be released in accordance with the MPA.

Section 552.101 also encompasses section 402.083 of the Labor Code, which provides that “[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 university that was not obtained from the division may not be withheld on the basis of section 402.083(a). In this instance, the requestor seeks access to information in the file of a named workers’ compensation claimant. Although you generally claim that Exhibit B-2 is excepted from disclosure in its entirety under section 402.083, you acknowledge that only the document you have marked in Exhibit B-2, part C was obtained from the division. Accordingly, based on your representation and our review, we conclude that the university must withhold only the page you have marked in Exhibit B-2, Part C under section 552.101 in conjunction with section 402.083 of the Labor Code.

Section 552.101 also encompasses 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. This office has found 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). 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 and the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold Exhibit B-2 in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the information must be withheld in its entirety on the basis of common-law privacy. However, we agree that portions of the remaining information in Exhibit B-2, Part C, which we have marked, are highly embarrassing and not of legitimate public concern. Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that you have failed to demonstrate how any portion of the remaining information constitutes highly intimate or embarrassing information not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Next, you assert that portions of the remaining information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open records Decision No. 530 at 5 (1989). You state that the employee at issue made a timely request in accordance with section 552.024 to keep their personal information confidential. Based on your representation, we find that the personal information you have marked, as well as the additional information we have marked, is confidential under section 552.117 of the Government Code and must be withheld on that basis. As our ruling is dispositive for this information under section 552.117(a)(1), we need not address your argument under section 552.147 of the Government Code.

In summary, we find that the entirety of Exhibit B-1 and Part B of Exhibit B-2, as well as the portions of Exhibit B-2, Part C we have marked, constitute medical records that may only be released in accordance with the MPA. The university must withhold the page you have

marked in Exhibit B-2, Part C under section 552.101 in conjunction with section 402.083 of the Labor Code. The university must withhold the information we have marked in Exhibit B-2, Part C under section 552.101 in conjunction with common-law privacy. The university must withhold the information you have marked, as well as the additional information we have marked, under section 552.117 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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/eeg

Ref: ID# 348487

Enc. Submitted documents

c: Requestor
(w/o enclosures)