



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2009-10997

Dear Ms. Rangel:

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# 351466.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information regarding a named individual and a specified arrest. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the Medical Practice Act ("MPA"). See Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in pertinent part:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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(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). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990).

Medical records must be released upon the governmental body's receipt of 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. 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. *See* Open Records Decision No. 565 at 7 (1990). We have marked medical records that are subject to the MPA.

We note, however, that the requestor is a Department of State Health Services (the “DSHS”) investigator who is investigating the fire fighter at issue. The requestor states that she is requesting investigation records pertaining to the fire fighter at issue pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 provides that the DSHS or its representative “is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code].” Health & Safety Code § 773.0612(a). The submitted information pertains to an emergency medical technician/paramedic licensed under chapter 773 of the Health and Safety Code. Because the submitted information is directly related to emergency medical services (“EMS”) personnel and the requestor is conducting an investigation under chapter 773, we conclude that section 773.0612 applies to the submitted information.

Thus, the instant situation presents a conflict between the MPA and section 773.0612 of the Health and Safety Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general

provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See* Gov't Code § 311.026; *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 583 (1990), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

The MPA specifically makes medical records confidential, while section 773.0612 gives a general right of access to all information related to EMS personnel being investigated by the DSHS. *See* Occ. Code § 159.002(a), (b); Health & Safety Code § 773.0612. Therefore, we find that the confidentiality provisions of the MPA are more specific than the access provision of section 773.0612. Although the provisions of the MPA at issue here were enacted prior to the enactment of section 773.0612, because the MPA is the more specific statute, we find the MPA prevails over section 773.0612 and the sheriff may only release the medical records we have marked in accordance with the MPA.

You claim the portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Section 552.130 makes information confidential and contains its own release provisions. Thus, section 552.130 is not a general provision under the Act. Additionally, section 552.130 was passed in a later legislative session than section 773.0612.² Therefore, notwithstanding the access provision of section 773.0612, because section 552.130 is the more specific statute and was enacted later in time, the sheriff must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

You also assert that some of the remaining information is excepted under section 552.147 of the Government Code. This office has found that specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986). Therefore, the requestor's statutory right of access under section 773.0612 prevails over the general exceptions to disclosure found in section 552.147 of the Government Code. Accordingly, the sheriff may not withhold any information under section 552.147.

²Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government Code); Act of March 25, 1991, 72nd Leg., R.S., ch. 14, § 264, 1991 Tex. Gen. Laws 42, 206 (Vernon) (codified as section 773.0612 of the Health and Safety Code).

In summary, the sheriff may only release the medical records we have marked in accordance with the MPA. The sheriff must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.³

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#351466

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³If the sheriff receives another request for the submitted records from a person who would not have a special right of access to portions of the information, the sheriff should resubmit the records and request another decision. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).