



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2009

Mr. John C West
General Counsel
Office of Inspector General
Texas Department of Criminal Justice
4616 Howard Lane, Suite 250
Austin, Texas 78728

OR2009-11981

Dear Mr. West:

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# 353304 (OIG File No. 2009-00173).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a former department employee's relationship with an offender. The department's Office of the General Counsel (the "OGC") and its Office of the Inspector General (the "OIG") have submitted separate correspondence to this office. The OGC states it has received clarification of the request from the requestor.¹ Based upon the clarification, the OGC asserts that it will release its responsive information and thus withdraws its request for a ruling. The OIG states it will release some information to the requestor. Further, the OIG states it is withholding portions of the requested information pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).² The OIG also states it will withhold social security numbers under section 552.147 of the

¹See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code. It also serves as a previous determination that Texas driver's license information is excepted from disclosure under section 552.130 of the Government Code.

Government Code.³ The OIG claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the OIG claims 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. Section 552.101 encompasses section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by the department], including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

Id. § 508.313(a); *see also id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). Upon review, we agree portions of the submitted information pertain to a releasee. Thus, the information we have marked is subject to section 508.313 of the Government Code. You inform us the requestor is not an entity authorized to obtain the information at issue under section 508.313(c). Further, this information is not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. However, we note the remaining information is not about a releasee. Therefore, section 508.313 is not applicable to any of the remaining information and the department may not withhold it under section 552.101 on that basis.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See Occ. Code* § 151.001. The MPA governs the public availability of medical records. Section 159.002 of the MPA provides, in part:

³We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

(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 that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 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). You do not explain, and the submitted information does not indicate, these records were created or maintained by a physician. Thus, we find they are not subject to the MPA. Accordingly, they may not be withheld under section 552.101 of the Government Code on that basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. The remaining submitted 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, 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,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 353304

Enc. Submitted documents

c: Requestor
(w/o enclosures)