



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2009

Mr. Clark McCoy
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2009-14132

Dear Mr. McCoy:

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# 357615 (City of Anna File No. C03029PIR20090715-01).

The City of Anna Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You assert this request for information was not valid under the Act. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we must address your assertion that the request for information was improper. Section 552.301(c) of the Government Code provides that "a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." Gov't Code § 552.301(c). You argue that because the e-mail request was sent to two department officers, instead of the city's chief administrative officer or his designee, the e-mail request was an improper written request, and the department did not have a duty to respond. *See generally id.* § 552.301-(governmental-body's-duty-to-request-a-ruling-from-the-attorney-general-arises-only-after-it-receives-a-written-request). We note, however, that the Act requires the uniform treatment of requestors. *See id.* § 552.223. Open Records Letter No. 2009-10831 (2009) was issued by this office in response to e-mailed requests which were sent from the same requestor to the city attorney and department officers. You did not assert these prior requests

were improper. By honoring these prior requests, the department affirmed to the requestor that the procedural aspects of her requests were proper, and that requests e-mailed to the city's attorney and department officers would be accepted and considered. Accordingly, because the department is required to treat requests uniformly, you may not now assert the requests are improper. Accordingly, we consider your arguments under the Act against disclosure of the submitted 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. This section encompasses information made confidential by other statutes. Medical records 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 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). 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004. We also have concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released on 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. 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). The department must withhold the submitted lab test results under section 159.002 of the MPA, unless it receives the required written consent for release of the information under sections 159.004

¹In the future, the requestor should submit any e-mailed requests to the city's chief administrative officer or his designee as required by section 552.301(c) of the Act.

and 159.005 of the MPA. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 357615

Enc. Submitted documents

cc: Requestor
(w/o enclosures)