



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2009

Ms. Ann Montgomery  
Assistant Ellis County and District Attorney  
Ellis County and District Attorney  
1201 North Highway 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2009-15406

Dear Ms. Montgomery:

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# 360140.

The Ellis County and District Attorney's Office (the "district attorney") received a request for information pertaining to a specified case. You state you have released some information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information contain a medical record pertaining to the requestor's spouse, access to which is governed by 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.

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<sup>1</sup>Although you initially raised section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. See Gov't Code §§ 552.301, 552.302.

(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). Medical records must be released upon 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. *Id.* §§ 159.004, 159.005. 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. 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). We have marked the medical record in the submitted information that may only be released in accordance with the MPA.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representations and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to the information you have marked.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Basic information includes the identification and description of the complainant and a detailed description of the offense. See *Houston Chronicle*, 531 S.W.2d at 187; ORD127. Thus, with the exception of the basic information, the district attorney may withhold the information you have marked under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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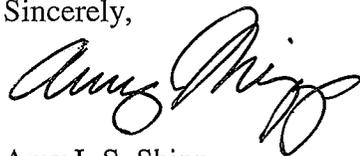
<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

In summary, the marked medical record may only be released in accordance with the MPA. Except for basic information, the district attorney may withhold the information you have marked under section 552.108(a)(2) of the Government Code.<sup>3</sup>

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, 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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 360140

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the district attorney receives another request for this information from a different requestor, the city must again seek a ruling from this office.