



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2009

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-16507

Dear Ms. Smith:

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# 361834 (OR 09-1405).

The Texas Department of Public Safety (the "department") received a request for all information related to a specified complaint. You state the department has released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge, and we agree, that the department failed to meet the deadlines prescribed by section 552.301 in requesting a decision from our office. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A

compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider your argument under this section.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Section 411.00755 of the Government Code states in pertinent part:

(b) The personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release in accordance with Chapter 552:

(1) any letter, memorandum, or document relating to:

...

(B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action[.]

Id. § 411.00755(b). Section 411.00755 defines a personnel record, in part, as "any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]" *Id.* § 411.00755(a). For the purpose of section 411.00755, "disciplinary action" means discharge, suspension, or demotion. *Id.* § 411.0072(a)(1).

You claim the submitted information consists of documents related to an internal investigation that did not result in the discharge, suspension, or demotion of any department officer. Based on your representation and our review of the information at issue, we conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code.

However, we note the personnel records at issue include the requestor's medical records. The medical records are 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:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). This office has concluded 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). As the subject of the medical records, the requestor may obtain her records upon compliance with the release provisions. *See* Occ. Code §§ 159.004, .005.

In this instance, the department seeks to withhold the requestor's medical records under section 411.00755 of the Government Code. Thus, we must address the conflict between the two provisions. 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). The MPA is a more specific statute than section 411.00755 because the MPA applies specifically to medical records while section 411.00755 applies generally to all department personnel records of commissioned officers. Although the provisions of the MPA at issue here were enacted prior to the enactment of section 411.00755,¹ we have no indication that the legislature intended that section 411.00755 prevail over the MPA. Therefore, because the MPA is the more specific statute, we find the MPA prevails over section 411.00755. Accordingly, if release of the requestor's medical records, which we have marked, is proper under the MPA, then the department may not withhold the records under section 411.00755.

¹Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 6(b)(1), 1999 Tex. Gen. Laws 1431 (now codified as Medical Practice Act at subtitle B of title 3 of the Occupations Code); Act of April 25, 2007, 80th Leg., R.S., ch. 35, § 1, 2007 Tex. Gen. Laws 33 (now codified as section 411.00755 of the Government Code).

In summary, the marked medical records may only be released in accordance with the MPA. The department must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 361834

Enc. Submitted documents

c: Requestor
(w/o enclosures)