



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 11, 2011

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2011-05031

Dear Ms. Cohen:

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# 414206 (ORA# 11-0210).

The Texas Department of Public Safety (the "department") received a request for documents relating to the arrest, incarceration, investigation, and death of a named individual in the Refugio County Jail. You informed the requestor you will release some of the requested information. You claim 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.

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. This section encompasses information protected by other statutes, such as section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

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MTH

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...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.093. You state the information you have marked constitutes records maintained by an EMS provider documenting emergency medical services provided to a patient by EMS personnel. Based on your representation and our review, we conclude the information at issue constitutes EMS records that are confidential under section 773.091. You do not inform us the department has received adequate consent for release of this information. Therefore, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g).

Section 552.101 also encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. Occ. Code §§ 151.001-167.202. Section 159.002 of the MPA provides in pertinent 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.

*Id.* § 159.002(a)-(c). 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). Information 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). Upon review, we find most of the information you have marked constitutes confidential medical records subject to the MPA. Accordingly, the department may only release this information in accordance with the MPA. However, a portion of this information, which we have marked, does not constitute confidential medical records subject to the MPA. As you raise no argument against disclosure of this information, the department must release it to the requestor.

In summary, the department must withhold the EMS records you have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except the information specified by section 773.091(g). The department may only release the marked medical records in accordance with the MPA. The department must release the information we have marked.

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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 414206

Enc. Submitted documents

c: Requestor  
(w/o enclosures)