



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2012

Mr. Peter Scott  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2012-06402

Dear Mr. Scott:

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# 452535 (City ID# 91).

The Wichita Falls Police Department (the "department") received a request for all information pertaining to case number 12-020183. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-02977 (2012). In that ruling, we determined the department may withhold the submitted dash cam videos under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2012-02977 as a previous determination and withhold the identical information in accordance with that ruling.<sup>1</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first

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<sup>1</sup>As our ruling is dispositive for the information at issue, we need not address your argument under section 552.119 of the Government Code against its disclosure.

type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains court-filed documents, which we have marked, that are subject to subsection 552.022(a)(17). You seek to withhold the information subject to subsection 552.022(a)(17) under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the marked court-filed documents may not be withheld under section 552.108 of the Government Code. As you claim no other exception to the disclosure of the marked court-filed documents, they must be released.

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 information made confidential by statute, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant 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 determined in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act, such as section 552.108 of the Government Code. *See* 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; ORD 598. We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Section 159.001 of the MPA defines “patient” as a person who consults with or is seen by a physician to receive medical care. *See* Occ. Code § 159.001(3). Under this definition, a deceased person cannot be a “patient” under section 159.002 of the MPA. *See* ORDs 487, 370, 343. Thus, the MPA is applicable only to records relating to a person who was alive at the time of diagnosis, evaluation or treatment to which the records pertain.

Upon review, we find portions of the submitted information, which we have marked, constitute records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. Medical records must be released on receipt of signed, written consent, provided 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. The medical records of a deceased patient may only be released on the signed written consent of the decedent's personal representative. *See id.* § 159.005(a)(5). 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). In this instance, the requestor may be the personal representative of the deceased individual whose medical records are at issue. Thus, the medical records we have marked must be withheld under section 552.101 of the Government Code in conjunction with the MPA, unless the department receives written consent from the deceased individual's personal representative for release of those records that complies with sections 159.004 and 159.005 of the MPA. However, we find none of the remaining submitted information consists of medical records for purposes of the MPA, and no portion of the remaining information may be withheld under section 552.101 on that basis.

The submitted documents also include emergency medical services (“EMS”) records to which the requestor may have a right of access. Section 552.101 of the Government Code also encompasses information protected by 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 [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(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). Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health & Safety Code. *See id.* §§ 773.091-.094. Upon review, we find section 773.091 is applicable to the information at issue, which we have marked. We note records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information[.]” *Id.* §§ 773.092(e)(4), .093. Section 773.093 provides a consent for release of EMS records must be written and signed by the patient, authorized representative, or personal representative and must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. *Id.* § 773.093(a). When the patient is deceased, the patient’s personal representative may consent to the release of the patient’s records. *Id.*; *see also* Open Records Decision No. 632 (1995) (defining “personal representative” for purposes of section 773.093 of the Health and Safety Code). We note although you raise section 552.108 for the EMS records, the general exceptions found in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on a statutory right of access to information); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, if the department does not receive consent that complies with section 773.093 of the Health and Safety Code, then with the exception of the information subject to section 773.091(g), the department must withhold the marked EMS under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. However, if the department receives proper consent, then the marked EMS records must be released in their entirety in accordance with chapter 773 of the Health and Safety

Code. We will address your argument under section 552.108 of the Government Code for the remaining information, including the information subject to section 773.091(g) of the Health and Safety Code if the department does not receive proper consent.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided documentation showing, the remaining information pertains to an open criminal investigation. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the remaining information, including the information subject to section 773.091(g) of the Health and Safety Code, under section 552.108(a)(1) of the Government Code.

In summary, the department may rely on Open Records Letter No. 2012-02977 as a previous determination and withhold the identical information in accordance with that ruling. The department must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA, unless the department receives written consent from the deceased individual’s personal representative for release of those records that complies with sections 159.004 and 159.005 of the MPA. With the exception of the information of the information subject to section 773.091(g) of the Health and Safety Code, the department must withhold the marked EMS under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, unless the department receives consent that complies with section 773.093 of the Health and Safety Code. With the exception of the information subject to section 552.022(a)(17) and the basic information, the department may withhold the remaining information, including the

information subject to section 773.091(g) if the department does not receive consent that complies with section 773.093, under section 552.108(a)(1) of the Government Code.<sup>2</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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 452535

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.