



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2014

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
Box 4087  
Austin, Texas 78773-0001

OR2014-16701

Dear Ms. Cost:

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# 538814 (PIR# 14-2990).

The Texas Department of Public Safety (the "department") received a request for information pertaining to the investigation of a specified incident. The department indicates it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the claimed exceptions 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, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides in relevant part the following:

- (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). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. 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. Upon review, we find a portion of the submitted information constitutes information obtained from medical records. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with the MPA.<sup>1</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find none of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 of the Government Code on that ground.

The department also raises section 552.114 of the Government Code for portions of the remaining information. Section 552.114(a) excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office has determined the same analysis applies under section 552.114 and the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the

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<sup>1</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

United States Code. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information").

The department is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an "educational agency" within FERPA). FERPA contains provisions that govern access to education records that an educational agency or institution transfers to a third party. You state the Texas Rangers obtained student records from the Lockhart Independent School District (the "district") pursuant to a grand jury subpoena. You also inform us the Texas Rangers returned those records to the district, but the submitted information you have marked under section 552.114 refers to information obtained from those education records. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to those records. Such determinations under FERPA must be made by the educational authority from which the records were obtained. Thus, the department must contact the district, as well as the DOE, regarding the applicability of FERPA to these records. Likewise, we do not address your arguments under section 552.114 of the Government Code for the information at issue. *See* Gov't Code § 552.114; Open Records Decision No. 539 (1990).

To conclude, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must contact the district and the DOE regarding the applicability of FERPA to the submitted information that was obtained from education records. The department must release the remaining information.

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.

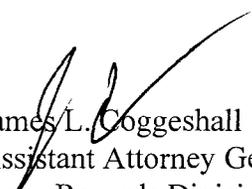
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 538814

Enc. Submitted documents

c: Requestor  
(w/o enclosures)