



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2014

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-17089

Dear Ms. Mares:

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# 537495 (McKinney ORR# 10-11036).

The City of McKinney (the "city"), which you represent, received a request for a copy of a specified CD, copies of items located in a specified individual's car, and any statements made by the specified individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered the requestor's comments. *See Gov't Code § 552.304* (interested party may submit written comments regarding availability of requested information).

Initially, we note the request only seeks a copy of a specified CD, copies of items located in a specified individual's car, and any statements made by the specified individual. You have submitted information other than the requested information. This information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of the information we have marked as non-responsive, and you need not release such information in response to the request.

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 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). 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 the information we have marked consists of medical records. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with the MPA. However, we find none of the remaining information constitutes medical records or information obtained from medical records. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with the MPA.

However, we note, and you acknowledge, the requestor is a representative of the Texas Department of State Health Services (the “DSHS”). The requestor has informed the city that DSHS seeks the requested information as part of an investigation pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 provides that the DSHS or its representative “is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code].” Health & Safety Code § 773.0612(a). The submitted information pertains to an emergency medical technician/paramedic licensed under chapter 773 of the Health and Safety Code. Because the submitted information is directly related to emergency medical services (“EMS”) personnel and the requestor is conducting an investigation under chapter 773, we conclude that section 773.0612 of the Health and Safety Code applies to the submitted information. Accordingly, we will consider whether section 773.0612 of the

Health and Safety Code permits DSHS to obtain information that is otherwise protected by the MPA.

We find there is a conflict between the confidentiality of the medical records under the MPA and the right of access afforded to DSHS under section 773.0612 of the Health and Safety Code. Where general and specific provisions are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Although section 773.0612 of the Health and Safety Code generally allows DSHS access to information pertaining to emergency services personnel, section 159.002 of the MPA specifically protects medical records. We therefore conclude that, notwithstanding section 773.0612, the city must withhold from disclosure under section 552.101 of the Government Code the information that is confidential under section 159.002 of the MPA. *See* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission).

Although you also seek to withhold some of the remaining information under sections 552.108 of the Government Code, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor's statutory access prevails and the city may not withhold any portion of the information at issue under section 552.108 of the Government Code.

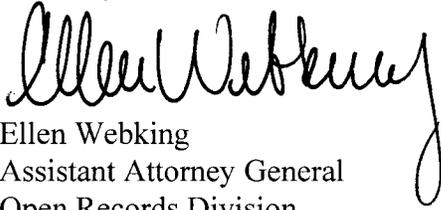
In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The city must release the remaining responsive information to DSHS pursuant to section 773.0612 of the Health and Safety Code.¹

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.

¹We note that because the requestor has a special right of access to this information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen Webking". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 537495

Enc. Submitted documents

c: Requestor
(w/o enclosures)