



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2014

Sgt. Rocky Bright
Custodian of Records
Ector County Sheriff's Office
P.O. Box 2066
Odessa, Texas 79760

OR2014-20644

Dear Sgt. Bright:

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# 543211.

The Ector County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.119 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

The sheriff's office generally raises section 552.101 of the Government Code for the submitted inmate grievances and inmate incident reports. 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 exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, the sheriff's office has failed to direct our attention to any law, nor are we aware of any law, under which the submitted inmate grievances and inmate incident reports are considered to be confidential for purposes of section 552.101. Therefore, none of the submitted inmate grievances and inmate incident reports may be withheld under section 552.101 of the Government Code.

¹We note although you raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision No. 676 at 12 (2002).

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the submitted video recording depicts how “Ector County Detention officer[s] [respond] to emergencies within the [Ector County Jail (the “jail”)] that could jeopardize the life and safety of the detention officers.” You assert if the submitted video recording was released, “it would allow citizens to anticipate weaknesses inside the [jail].” You further assert if the submitted video recording was released, the public could “find ways of using different tactics to harm or cause serious bodily injury” to detention officers. You argue the submitted inmate grievance and inmate incident reports “are used for internal records only and should not be released to the public.” You assert if the submitted inmate grievance and detention officer reports are released, it “may cause a retaliation against the parties involved based on . . . gang activities, which could place the inmates and officers involved in further danger. . . [and] in turn could cause a riot within the detention facility.” Based on your representations and our review, we find the release of the submitted video recording would interfere with law enforcement. Therefore, the sheriff’s office may withhold the submitted video recording under section 552.108(b)(1) of the Government Code.² However, we find you have failed to demonstrate release of the remaining information would interfere with law enforcement. Thus, no portion of the remaining information may be withheld under section 552.108(b)(1).

Section 552.101 of the Government Code encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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 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. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* Upon review, we find some of the remaining information constitutes records of the identity, diagnosis, evaluation, or treatment of a patient that was created or are maintained by a physician. Accordingly, the sheriff's office must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. However, we marked documents created by nurses. The sheriff's office must only withhold these documents if they were created under the supervision of a physician. If the documents created by the nurses were not created under the supervision of a physician, they are not subject to the MPA and the sheriff's office may not withhold them under section 552.101 on that basis. Furthermore, we find you have not demonstrated how any of the remaining information you seek to withhold constitutes medical records for purposes of the MPA, and the sheriff's office may not withhold any of the remaining information on that basis.

Section 552.101 of the Government Code also encompasses 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 demonstrated. *See 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 the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the

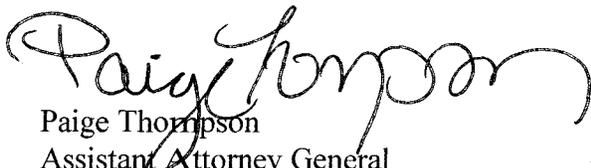
information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office may withhold the submitted video recording under section 552.108(b)(1) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA; however, the sheriff's may only withhold the documents created by nurses under section 552.101 of the Government Code in conjunction with the MPA if the documents were created under the supervision of a physician. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office 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, 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 543211

Enc. Submitted documents

c: Requestor
(w/o enclosures)