



January 14, 2015

Ms. Robin Chapman
Assistant General Counsel
Office of General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2015-00723

Dear Ms. Chapman:

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# 550653 (ORR# 23682/2015).

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified narcotic treatment program during a specified time period and documentation of any methadone-related deaths associated with the narcotic treatment program.¹ You state the department will withhold certain information pursuant to the previous determinations issued in Open Records Decision No. 684 (2009) and Open Records Letter No. 2010-18849 (2010).² You also state the department will withhold social

¹You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Open Records Decision No. 684 serves as a previous determination to all governmental bodies permitting them to withhold certain information without seeking a ruling from this office. Open Records Letter No. 2010-18849 is a previous determination issued to the department permitting it to withhold information furnished to, or created or gathered by, the department that is related to cases or suspected cases of diseases or health conditions under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code, unless the exceptions to confidentiality listed in subsections 81.046(c), (d), and (f) are

security numbers pursuant to section 552.147(b) of the Government Code.³ You state the department 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 representative sample of information.⁴

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 other statutes make confidential, such as section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides, in pertinent part, as follows:

(a) The following information is confidential and not subject to disclosure under [the Act]:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). Section 48.101 makes confidential information used or developed in an investigation made under chapter 48 of the Human Resources Code. *See id.*

applicable. *See* Health & Safety Code § 81.046(c), (d), (f); *see also* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, facts, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

³Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

⁴We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

§ 48.101(a); 25 T.A.C. § 1.207(a). Chapter 48 regulates the investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See* Hum. Res. Code § 48.051. For purposes of chapter 48, a disabled person means “a person with a mental, physical, or developmental disability that substantially impairs the person’s ability to provide adequately for the person’s care or protection and who is 18 years of age or older; or under 18 years of age and who has had the disabilities of minority removed.” *Id.* § 48.002(a)(8). You state some of the submitted information, which you have marked, consists of an investigation by the department conducted under chapter 48 of the Human Resources Code. You explain the department is charged under chapter 48 of the Human Resources Code with investigating allegations of abuse or neglect within one of its licensed facilities. Based on your representations and our review, we agree the marked information was used or developed in an investigation made under chapter 48 into the alleged abuse, neglect, or exploitation of a disabled person. *See id.* §§ 48.002(a)(2)-(4) (defining “abuse,” “exploitation,” and “neglect” for purposes of chapter 48). Thus, the submitted information must not be released to the public, except for a purpose consistent with chapter 48 and as provided by an investigating state agency rule or federal law. *See id.* § 48.101(b)-(g) (permitting release of confidential information only in certain circumstances); 25 T.A.C. § 1.207. You do not indicate, nor does it appear, an exception to confidentiality applies in this instance. Accordingly, we conclude the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.⁵

Section 552.101 of the Government Code also encompasses information made confidential by 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.

⁵As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Id. § 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).

You state some of the remaining information, which you have marked, constitutes information obtained directly from records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Upon review, we agree the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with the MPA.⁶

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. The department must also withhold the information you marked under section 552.101 of the Government Code in conjunction with the MPA. 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

⁶As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Ref: ID# 550653

Enc. Submitted documents

c: Requestor
(w/o enclosures)