



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 28, 2015

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711-2157

OR2015-10428

Dear Mr. Bowman:

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# 565308 (TDLR ID#s PIR-20150458 and PIR-20150462).

The Texas Department of Licensing and Regulation (the "department") received two requests for information pertaining to a specified event. You state the department has released some 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 information.¹

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. Section 159.002 of the MPA provides, in relevant part:

¹We note in a letter dated March 30, 2015, the department states it wishes to withdraw its request for an open records decision for the submitted toxicology laboratory results because the department will release this information to the requestor.

(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 Exhibit 4 consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the department must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. This office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 545 at 3 (1990)* (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy). In this instance, the information at issue involves promoter-contestant contracts. You claim the submitted contracts constitute personal financial information of the contestants that do not relate to financial transactions between the individuals and a governmental body. Based on your representations and our

review, we conclude the contracts in Exhibit 2 meet the standards articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the contracts in Exhibit 2 must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information in Exhibit 2 is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with the MPA and the contracts in Exhibit 2 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information in Exhibit 2.

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# 565308

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)