



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Ms. Josi Diaz
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2015-15957

Dear Ms. Diaz:

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# 574056 (DPD# 2015-07253).

The Dallas Police Department (the "department") received a request for certain recordings related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim 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. Section 552.101 encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides:

(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

¹You acknowledge the department failed to meet its deadlines under section 552.301 of the Government Code in asking this office for a decisions. *See* Gov't Code § 552.301(b). Nevertheless, section 552.101 provides a compelling reason for not disclosing this information, so will consider that exception. *See id.* § 552.302.

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.

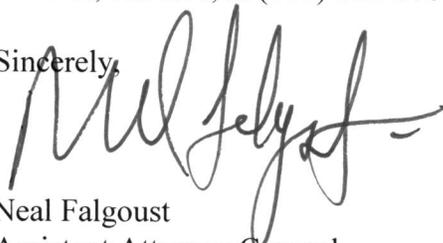
Occ. Code § 159.002(a)–(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician and information obtained from those records. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office also has concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). The submitted information consists of a video recording created by the department during an interview of a witness at a hospital. This information is not subject to section 159.002 of the Occupations Code, and we conclude the department may not withhold it under section 552.101 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 satisfied. *See id.* at 681–82. The 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 indicated meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. The department must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. We find there is a legitimate public interest in the remaining information, and the department may not withhold it under section 552.101 of the Government Code. As you raise no other exceptions, 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust", written over a light blue horizontal line.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 574056

Enc. Submitted documents

c: Requestor
(w/o enclosures)