



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 18, 2015

Ms. Monica Hernandez
Assistant City Attorney
City of San Antonio
Office of the City Attorney
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2015-19527

Dear Mr. Kopp:

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# 580709 (COSA File No. W08819-070315).

The City of San Antonio (the "city") received a request for information pertaining to the final dispositions of dogs impounded at the city's Animal Control Services for rabies and bite cases during January of 2015. The city states it will release some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of 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. This section encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides in relevant part the following:

¹We 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.

(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.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those 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 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 at 1 (1990). Upon review, we agree the information the city has marked under the MPA constitutes medical records. Accordingly, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 801.353 of the Occupations Code, which provides, in relevant part, the following:

(a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian's client.

(b) A veterinarian may not be required to release information concerning the veterinarian's care of an animal, except on the veterinarian's receipt of:

(1) a written authorization or other form of waiver executed by the client; or

(2) an appropriate court order or subpoena.

...

(f) A veterinarian does not violate this section by providing the name or address of a client, or the rabies vaccination status of a specific client's specific animal, to a public health authority, veterinarian, physician, or other licensed health care professional who requests the identity of the client to obtain information for:

- (1) the verification of a rabies vaccination;
- (2) other treatment involving a life-threatening situation; or
- (3) a public health purpose.

(g) A public health authority that receives information under Subsection (f) shall maintain the confidentiality of the information, may not disclose the information under [the Act], and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Occ. Code 801.353(a)-(b), (f)-(g). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* The submitted information contains veterinary records that the city asserts are confidential under section 801.353. However, the city does not inform us these records were created by city veterinary staff. *See id.* § 801.353(a)-(b). The city also does not inform us these records were provided to city by the veterinarians at issue pursuant to section 801.353(f). *See id.* § 801.353(f)-(g). Therefore, we conclude the city has not established this information is confidential under section 801.353, and may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 826.0211(a) of the Health and Safety Code, which reads as follows:

Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under [the Act]. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). We note section 826.0211 is applicable only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. Upon review, we agree the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code.

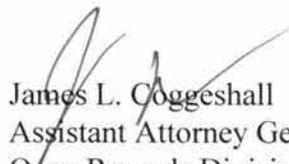
The remaining information contains e-mail addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² See Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The city does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

To conclude, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with the MPA and section 826.0211 of the Health and Safety Code. The city must also withhold the information we have marked under section 552.137 of the Government Code. The city 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Ref: ID# 580709

Enc. Submitted documents

c: Requestor
(w/o enclosures)