



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 16, 2015

Ms. Laura Anne Coats  
Assistant District Attorney  
County of Dallas  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2015-24078

Dear Ms. Coats:

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# 587186.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information related to a specified incident, to include toxicology results and all video recordings related to the matter. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note you only submitted responsive information pertaining to the portion of the request seeking toxicology results. To the extent any additional information responsive to this request exists, we assume the district attorney's office has released it to the requestor. If the district attorney's office has not released any such information, it must do so. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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<sup>1</sup>We note the district attorney's office did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

Section 552.101 of the Government Code exempts 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 (“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.

*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). Upon review, we find you have not demonstrated any of the submitted information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician or information obtained from a medical record. Accordingly, the district attorney’s office may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of 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. *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). However, we note the public has a legitimate interest in knowing the general details of a crime. *See generally* *Lowe v. Hearst Commc’ns, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation

of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994)); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). (public has legitimate interest in details of crime and police efforts to combat crime in community). Upon review, we find you have not demonstrated any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, the district attorney’s office may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the submitted information must be released.

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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 587186

Enc. Submitted documents

c: Requestor  
(w/o enclosures)