



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2016

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2016-07296

Dear Ms. Cost:

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# 604286 (DPS PIR # 15-6459).

The Texas Department of Public Safety (the "department") received a request for information pertaining to an investigation of an incident involving a named individual on a specified date.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. We have considered your arguments 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 information protected by other statutes, such as article 57B.03 of the Code of Criminal Procedure. You raise article 57B.03 in conjunction with section 552.101. You note that article 57B.02 of the Code of Criminal Procedure provides in relevant part that "[a] victim [of family violence] may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings." Crim. Proc. Code art. 57B.02(b). You also note that article 57B.03 provides that:

¹You state the requestor modified her request in response to a cost estimate. See Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

(a) A public servant with access to the name, address, or telephone number of a victim 17 years of age or older who has chosen a pseudonym under this chapter commits an offense if the public servant knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

Id. art. 57B.03(a). You inform us that the victim in this matter elected to be designated by a pseudonym in accordance with chapter 57B of the Code of Criminal Procedure. You state that although the victim is identified by a pseudonym in the submitted information and her name is not used, there is other information in the submitted documents that falls under article 57B.03. Upon review of your arguments and the submitted information, we agree article 57B.03(a) makes some of the submitted information confidential. Accordingly, the department must withhold this information, a representative sample of which we have marked, under section 552.101 of the Government Code. *See* Open Records Decision No. 584 (1991) (statute making release of information criminal offense deems information confidential by law for purposes of section 552.101). We find you have not demonstrated any of the remaining submitted information is made confidential under article 57B.03(a), and thus, none of the remaining information may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. The MPA provides, in relevant part:

...

(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(b)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). 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). We have also found when a file is created as the result of a hospital stay, all the documents in the file relating 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 (1990). Upon review, we find the information we have marked consists of information obtained from medical records pertaining to the identity, diagnosis, evaluation, or treatment of a patient. Therefore, this information is confidential under the MPA and must be withheld under section 552.101 of the Government Code on that basis.

Next, we note the submitted information includes the dates of birth of public citizens. In Open Records Letter No. 2015-27249 (2015), this office issued a previous determination to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, the department must withhold the dates of birth of public citizens in the submitted information in accordance with the previous determination issued in Open Records Letter No. 2015-27249.

Section 552.1175 of the Government Code protects the home address, home telephone number, date of birth, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1). We find some of the information in the submitted documents is subject to section 552.1175. If the peace officer to whom this information relates elects to restrict access to the information at issue in accordance with section 552.1175(b), the department must withhold this information, a representative sample of which we have marked, under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the Texas driver’s license numbers, motor vehicle identification numbers, and license plate numbers within the submitted information under section 552.130 of the Government Code.

In summary, the department must withhold the types of information we have marked under section 552.101 of the Government Code in conjunction with article 57B.03(a) of the Code of Criminal Procedure. The department must withhold the medical record information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must withhold the dates of birth of public citizens in the submitted information in accordance with the previous determination issued in Open Records Letter No. 2015-27249. If the peace officer whose personal information we have indicated elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the department must withhold the types of information we have marked under section 552.1175 of the Government Code. The department must withhold the

Texas driver's license numbers, motor vehicle identification numbers, and license plate numbers within the submitted information under section 552.130 of the Government Code. The department must release the remaining information.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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/bhf

Ref: ID# 604286

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).