



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 25, 2016

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

OR2016-19277

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# 624075 (TDLR Nos. PIR-20160715, PIR-20160718, PIR-20160720, PIR-20160726, PIR-20160728, PIR-20160727, PIR-20160733, and PIR-20160790).

The Texas Department of Licensing and Regulation (the "department") received multiple requests from different requestors for information related to the medical records of two named individuals. We understand you will redact dates of birth of living persons pursuant to the previous determination issued in Open Records Letter No. 2016-02039 (2016).¹ 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.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information made confidential by 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:

¹Open Records Letter No. 2016-02039 is a previous determination authorizing the department 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).

(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 the information we have marked constitutes 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 the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.²

We understand the department seeks to redact information protected by section 552.117(a) of the Government Code pursuant to section 552.024 of the Government Code.³ Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note section 552.117 applies only to information that a governmental body holds in an employment context. You seek to withhold some of the remaining information under section 552.117; however, the department does not maintain this information in an employment context. Accordingly, the department may not withhold

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See Gov't Code § 552.024.*

any portion of the remaining information under section 552.117(a)(1) of the Government Code.

We understand you seek to redact e-mail addresses in the remaining information under section 552.137 of the Government Code pursuant to Open Records Decision No. 684.⁴ 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). *See id.* § 552.137(a)-(c). Subsection 552.137(c)(5) provides, in part, section 552.137(a) does not apply to an e-mail address “provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code[.]” *Id.* § 552.137(c)(5); *see also id.* § 2001.003(2) (defining “license”). The department informs us applicants for a combative sports license must sign a consent form as part of their application. We note the submitted consent forms contain the e-mail addresses of the applicants. Based on your representation and our review, we conclude the submitted e-mail addresses fall within the scope of section 552.137(c)(5) and, thus, the department may not withhold them under section 552.137(a) of the Government Code.

Section 552.101 of the Government Code also encompasses section 51.207 of the Occupations Code, which provides, in relevant part:

(c) The department may satisfy any requirement under [chapter 51] or another law governing a program subject to regulation by the department to provide notice by delivering the notice by e-mail to the recipient’s last known e-mail address if the recipient has previously authorized the department to deliver the notice by e-mail. An e-mail address used under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 51.207(c). You assert the licensees’ e-mail addresses in the remaining information are confidential pursuant to section 51.207(c) of the Occupations Code. However, we are unable to determine if the department is sending notices that satisfy any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation. We are also unable to determine if the recipients whose e-mail addresses are at issue authorized the department to deliver the notices by e-mail. Therefore, we must rule conditionally. If the department is sending notices that satisfy any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation by the department and if the recipients whose e-mail addresses are at issue authorized the department to deliver the notices by e-mail, then the department must withhold

⁴Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses of members of the public subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

those recipients' e-mail addresses under section 552.101 of the Government Code in conjunction with section 51.207(c) of the Occupations Code. However, if the department is not sending notices that satisfy any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation by the department or the recipients whose e-mail addresses are at issue did not authorize the department to deliver the notices by e-mail, then the department may not withhold the e-mail addresses under section 552.101 of the Government Code in conjunction with section 51.207(c) of the Occupations Code.

In summary, the department must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. To the extent the department is sending notices that satisfy any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation by the department and if the recipients whose e-mail addresses are at issue authorized the department to deliver the notices by e-mail, then the department must withhold those recipients' e-mail addresses under section 552.101 of the Government Code in conjunction with section 51.207(c) of the Occupations Code. The remaining information must be released.⁵

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

⁵The remaining information contains social security numbers. Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without requesting a decision from this office. See Gov't Code § 552.147(b).

Ref: ID# 624075

Enc. Submitted documents

c: Requestors
(w/o enclosures)