



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2016

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2016-20834

Dear Mr. Cordes:

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# 628915.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests for (1) records related to search warrants and (2) emergency medical services ("EMS") visits for a specified address within a range of dates. We understand you have released information responsive to the first request. You claim the submitted information, which is responsive to the second request, 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 from disclosure "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 section 773.091 of the Health and Safety Code. Section 773.091 provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health & Safety Code. *See id.* §§ 773.091, .094.

Upon review, we find the information at issue constitutes records of the identity, evaluation, or treatment of patients by EMS personnel. Thus, this information constitutes EMS records that are subject to chapter 773 of the Health and Safety Code. Accordingly, except for information subject to section 773.091(g), the EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 181.006 of the Health and Safety Code, which provides the following:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Id. § 181.006. Section 181.001(b)(2)(A) defines "covered entity" to include any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You indicate the Fort Bend County EMS is a covered entity for purposes of section 181.006 of the Health and Safety Code. However, the request for

information was received by the sheriff's office. You do not inform us the sheriff's office is a covered entity for the purposes of section 181.006 of the Health and Safety Code. In order to determine whether the sheriff's office is a covered entity, we must address whether the sheriff's office engages in the practice of "assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information." *Id.* Section 181.001 states that "[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards [(“HIPAA”).]" *Id.* § 181.001(a). Accordingly, as chapter 181 does not define "protected health information," we turn to HIPAA's definition of the term. HIPAA defines "protected health information" as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines "individually identifiable health information" as information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Id. Upon review, we find you have not explained the remaining information consists of protected health information. Thus, we find you have failed to demonstrate the applicability of section 181.006 of the Health and Safety Code. Accordingly, the sheriff's office may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

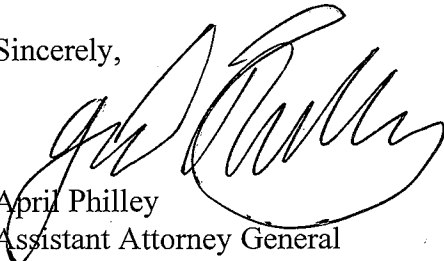
In summary, except for any information subject to section 773.091(g), which the sheriff's office must release, the EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



April Philley
Assistant Attorney General
Open Records Division

AP/eb

Ref: ID# 628915

Enc. Submitted documents

c: Requestor
(w/o enclosures)