



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 15, 2016

Ms. Halfreda Anderson-Nelson  
Public Information Officer  
Senior Assistant General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2016-20903

Dear Ms. Anderson-Nelson:

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# 631419 (ORR# W000947).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to the requestor's employment. You state DART released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions 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 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:

- (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).* 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 (1990).*

Upon review, we find a portion of the submitted information, which 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 and information obtained from a patient's medical records. Accordingly, DART must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.122(a) of the Government Code excepts from disclosure “[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]” *Gov't Code § 552.122(a).* In *Open Records Decision No. 626 (1994)*, this office determined the term “test item” in section 552.122 includes “any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated.” *ORD 626 at 6.* The question of whether specific information falls within the scope of section 552.122(a) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *See Open Records Decision No. 118 (1976).* *See generally* *ORD 626 at 4-5.* Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See Attorney General Opinion JM-640 at 3 (1987).*

You seek to withhold the submitted questions and answers under section 552.122 of the Government Code. You assert the questions test the knowledge and abilities of applicants in a particular area. You indicate DART uses the submitted questions on a continuing basis. Based on your representations and our review, we find the submitted questions are “test items” under section 552.122(a) of the Government Code. Furthermore, we find release of

the answers to the questions would reveal the questions themselves. Therefore, DART may withhold the submitted test questions and answers under section 552.122(a) of the Government Code.

In summary, DART must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA. DART may withhold the submitted test questions and answers under section 552.122(a) of the Government Code.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/dls

Ref: ID# 631419

Enc. Submitted documents

c: Requestor  
(w/o enclosures)