



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 15, 2017

Mr. Joseph R. Crawford
Assistant City Attorney
City of Houston
P. O. Box 368
Houston, Texas 77001-0368

OR2017-03434

Dear Mr. Crawford:

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# 645890 (GC No. 23941).

The City of Houston (the "city") received a request for information relating to the application and permitting of a named individual for a vehicle for hire. You state the city will release some information to the requestor. You state the city will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision 684 (2009).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.

Initially, we note the requestor excludes social security numbers and dates of birth from her request for information. Accordingly, social security numbers and dates of birth are not

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

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 of the Government Code encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides in relevant part the following:

(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 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 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). Some of the information at issue consists of reports of the results of drug tests. Section 159.001 of the MPA defines “patient” as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001(3). Because the individual at issue in the reports did not receive medical care in the administration of the drug tests, this individual is not a patient for purposes of section 159.002. Upon review, we find the information we marked constitutes medical records. As such, the city must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information constitutes confidential medical records for the purposes of the MPA. Consequently, the city may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by

the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov't Code § 411.083. We understand the city is authorized to obtain CHRI from DPS. *See id.* § 411.083(b)(1). Section 411.0845 provides in relevant part:

(a) [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to [DPS] or the Federal Bureau of Investigation.

...

(d) [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Some of the remaining information, which we marked, consists of CHRI obtained through the DPS criminal history clearinghouse. Upon review, we find the marked information is confidential under section 411.0845 of the Government Code, and the city must withhold it under section 552.101 of the Government Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA and the information we marked under

section 552.101 in conjunction with section 411.0845 of the Government Code. The city must release the remaining responsive information.

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,

A handwritten signature in cursive script that reads "D. Michelle Case".

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

Ref: ID# 645890

Enc. Submitted documents

c: Requestor
(w/o enclosures)