



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 12, 2017

Ms. Katherine Antwi Green  
Associate General Counsel  
University North Texas System  
1155 Union Circle #310907  
Denton, Texas 76203

OR2017-12835

Dear Ms. Green:

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# 661352 (PIR No. 002013).

The University of North Texas Health Science Center (the "center") received a request for all records pertaining to a named individual and specified information pertaining to another named individual. 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 representative sample of information.<sup>1</sup>

Initially, we note the requestor asks the center to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the center has made a good-faith effort to do so.

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 encompasses section 161.032 of the Health and Safety Code which provides in part:

(c) Records, information, or reports of a . . . compliance officer and records, information, or reports provided by a . . . compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act],

...

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital, [or] hospital district[.]

Health & Safety Code § 161.032(c), (e)-(f). The center states Sample B consists of records, information, and reports received, created, or maintained by the center’s Risk Services Manager through the center’s Office of Institutional Compliance, Quality and Risk Management (the “OICQRM”). The center informs us the Risk Services Manager reports to the Chief Compliance and Enterprise Risk Management Officer, who is the compliance officer for the OICQRM. The center explains Sample B was created for and is part of the compliance file for a complaint and is not maintained in the regular course of business. *Cf. Texarkana Mem’l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Based on the center’s representations and our review, we conclude Sample B consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Therefore, the center must withhold Sample B under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses provisions within the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, governing release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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 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 the information we marked in Sample A 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, the center must withhold the information we marked in Sample A under section 552.101 in conjunction with the MPA. However, we find the remaining information in Sample A does not consist of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or maintained by a physician, or someone under the supervision of a physician. Therefore, the center may not withhold the remaining information in Sample A under section 552.101 of the Government Code on that basis.

In summary, the center must withhold Sample B under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The center must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. The center must release the remaining 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](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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/bw

Ref: ID# 661352

Enc. Submitted documents

c: Requestor  
(w/o enclosures)