



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2017

Mr. Wm. Keith Davis
Counsel for Tom Green County Sheriff
Hay, Wittenburg, Davis, Caldwell & Bale, L.L.P.
P.O. Box 271
San Angelo, Texas 76902-0271

OR2017-14523

Dear Mr. Davis:

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# 665784.

The Tom Green County Sheriff's Office (the "sheriff's office"), which you represent, received a request for specified information pertaining to lawsuits brought against the Tom Green County Jail. The sheriff's office states it does not have some of the requested information.¹ The sheriff's office also states it will release some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

Initially, we note Exhibit C, which is an insurance policy, is subject to section 552.022(a)(3) of the Government Code, which provides the following:

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

²We 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 those records contain substantially different types of information than that submitted to this office.

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- ...
- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Thus, pursuant to section 552.022(a)(3), the sheriff's office may only withhold this information if it is confidential under "other law." The Texas Supreme Court has determined the discovery privileges found in the Texas Rules of Civil Procedure and the Texas Rules of Evidence "are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). The sheriff's office asserts Exhibit C is privileged under section 101.104 of the Civil Practice and Remedies Code. However, section 101.104 is a civil discovery privilege under the Civil Practice and Remedies Code, and not a discovery privilege under either the Texas Rules of Civil Procedure or the Texas Rules of Evidence. Therefore, this section is not "other law" for purposes of section 552.022, and the sheriff's office may not withhold it on that ground. The sheriff's office also raises section 101.104 in conjunction with section 552.101 of the Government Code, which 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 is "other law" for purposes of section 552.022. Nevertheless, section 101.104 is a civil discovery privilege and does not make information expressly confidential for purposes of section 552.101. *See* Open Records Decision No. 551 at 3 (1990) (provisions of section 101.104 "are not relevant to the availability of the information to the public"). We note the Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Gov't Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by Act); *see also* Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (*overruled in part by* Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges). Accordingly, the sheriff's office may not withhold Exhibit C under section 552.101 in conjunction with section 101.104.

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). Upon review, we agree Exhibit B consists of medical records that the sheriff's office must withhold under section 552.101 of the Government Code in conjunction with the MPA.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

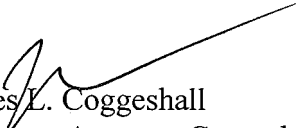
To conclude, the sheriff's office must withhold Exhibit B under section 552.101 of the Government Code in conjunction with the MPA. The sheriff's office must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 665784

Enc. Submitted documents

c: Requestor
(w/o enclosures)