



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2017

Ms. Melinda Brewer
Assistant District Attorney
Civil Division
Collin County District Attorney's Office
2100 Bloomdale Road, Suite 100
McKinney, Texas 75071

OR2017-15083

Dear Ms. Brewer:

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# 665048.

The Collin County District Attorney's Office (the "district attorney's office") received a request for a specified case file. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.115, 552.130, 552.137 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The court-filed documents at issue, which we have marked, are subject to section 552.022(a)(17). You seek to withhold some of this information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that may be waived and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not withhold the court-filed documents under section 552.108 of the Government Code. We understand

you also seek to withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public records. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, no portion of the court-filed documents at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.101 of the Government Code in conjunction with statutory law, as well as section 552.130 of the Government Code, can make information confidential for purposes of section 552.022, we will address their applicability to the court-filed documents at issue. Further, we will address your arguments against disclosure of the information not subject to section 552.022(a)(17) of the Government Code.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find some of the remaining information to be highly intimate or embarrassing and not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual’s privacy. In this instance, withholding only the individual’s identity or certain details of the remaining information from this requestor would not preserve the subject individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the district attorney’s office must withhold the information not subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy.¹

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. 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

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

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). Upon review, we find the information we 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, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA.²

In summary, with the exception of the information subject to section 552.022(a)(17) of the Government Code, which we have marked, the district attorney's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. In releasing the information subject to section 552.022(a)(17), the district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 black ink, appearing to read "Sid Pounds". The signature is written in a cursive style with a large initial "S" and "P".

Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/sdk

Ref: ID# 665048

Enc. Submitted documents

c: Requestor
(w/o enclosures)