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ATTORNEY GENERAL OF TEXAS

August 7, 2019

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2019-21771

Dear Ms. Harden:

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# 776847 (PIR No. R001053).

The Office of the Attorney General (the "OAG") received a request for information pertaining to a specified case involving the requestor from a designated time period. The OAG states it will release most of the responsive information to the requestor with redactions allowed by law, including sections 552.130(c) and 552.147(b) of the Government Code, as well as Open Records Decision No. 684 (2009) and Open Records Letter No. 2016-17399 (2016).¹ Further, the OAG states it will redact certain information subject to section 552.139 of the Government Code, which we understand it will do in accordance with Open Records

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. 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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific 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. Open Records Letter No. 2016-17399 authorizes the OAG to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

Letter Nos. 2011-18124 (2011) and 2016-21830 (2016).² The OAG claims some of 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.³

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. This section encompasses information protected by other statutes. In addition, a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision No. 599 at 4 (1992). The OAG raises section 552.101 in conjunction with part 603 of title 20 of the Code of Federal Regulations, which implements the Federal-State Unemployment Compensation Program, and pertains to the confidentiality and disclosure of information related to state unemployment compensation programs. 20 C.F.R. § 603.1 (providing purpose and scope of part 603). Section 1302(a) of title 42 of the United States Code authorizes the Secretary of Labor (the “secretary”) to promulgate rules and regulations necessary to the efficient administration of the functions with which the secretary is charged. *See* 42 U.S.C. § 1302(a). Section 603.4 of title 20 of the Code of Federal Regulations requires state unemployment compensation agencies, such as the Texas Workforce Commission (the “commission”), must protect the confidentiality of unemployment claim information which “reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information[.]” 20 C.F.R. § 603.4(b). “Claim information” means information about whether an individual is receiving, has received, or has applied for unemployment compensation, as well as “[a]ny other information contained in the records of the State [unemployment compensation] agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.” *Id.* § 603.2(a)(1)(i), (2)(ii). Information in the commission’s files may be disclosed to a requesting agency or other specified parties under certain circumstances. *See Id.* §§ 603.5, .6, .21. Section 603.5(e) provides “[d]isclosure of confidential [unemployment compensation] information to a public official for use in the performance of his or her official duties is permissible.” *Id.* § 603.5(e). “Performance of official duties” means “administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official.” *Id.* Section 603.9 further states that for disclosures

²In Open Records Letter No. 2011-18124, this office issued the OAG a previous determination authorizing it to withhold an employee’s user identification under section 552.139 of the Government Code without the necessity of requesting a decision from this office. In Open Records Letter No. 2016-21830, this office issued the OAG a previous determination authorizing it to withhold photographs of its employees created specifically for use on identification badges under section 552.139(b)(3) of the Government Code.

³We 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.

under section 603.5(e), the commission “must require the recipient to safeguard the information disclosed against unauthorized access or redisclosure . . . and must subject the recipient to penalties . . . for unauthorized disclosure[,]” and sets out the required safeguards. *Id.* § 603.9.

The OAG states Exhibit E consists of confidential unemployment claim information provided to the OAG by the commission. The OAG states the commission maintains this information as part of its administration of the state unemployment compensation program, and the commission has determined that releasing this information to the OAG is necessary for the administration or enforcement of laws under the OAG’s purview. *See id.* § 603.5(e). The OAG further states the OAG has executed a confidentiality agreement with the commission with respect to this information. *See id.* § 603.9. We therefore conclude Exhibit E is made confidential by section 603.4 of title 20 of the Code of Federal Regulations and must be withheld from the requestor pursuant to section 552.101 of the Government Code in conjunction with section 1302(a) of title 42 of the United States Code and section 603.4 of title 20 of the Code of Federal Regulations.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center [“NCIC”] or by the Texas Crime Information Center. *See Gov’t Code* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See 28 C.F.R.* § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally Gov’t Code* §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See Gov’t Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See ORD 565.* We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the marked FBI number consists of CHRI that is confidential under section 411.083. Accordingly, the OAG must withhold the FBI number it marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses information protected by section 611.002 of the Health and Safety Code. Section 611.002 provides “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.”

Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find Exhibit B constitutes a mental health record the OAG must withhold under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.⁴

Section 552.101 of the Government Code also 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 that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has determined 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 also found that when a file is created as the result of a hospital stay, all the documents in the file relating 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 Exhibit C constitutes confidential medical records under the MPA. Accordingly, the OAG

⁴We note this ruling does not affect an individual’s right of access to his or her own mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. *See* Health & Safety Code §§ 611.004, .0045; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act, subtitle B of title 3 of the Occupations Code, does not provide patient general right of access to his or her medical records from governmental body responding to a request for information under the Act).

must withhold Exhibit C under section 552.101 of the Government Code in conjunction with the MPA.⁵

Section 552.101 of the Government Code also encompasses section 562.052 of the Occupations Code. Section 562.052 provides:

A confidential record is privileged and a pharmacist may release a confidential record only to:

- (1) the patient or the patient's agent;
- (2) a practitioner or another pharmacist if, in the pharmacist's professional judgment, the release is necessary to protect the patient's health and well-being;
- (3) the [Texas Board of Pharmacy] or to a person or another state or federal agency authorized by law to receive the confidential record;
- (4) a law enforcement agency engaged in investigation of a suspected violation of Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);
- (5) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or
- (6) an insurance carrier or other third party payor authorized by the patient to receive the information.

Occ. Code § 562.052. Section 551.003(10) of the Occupations Code defines a confidential record for the purposes of section 562.052 as a "health-related record, including a patient medication record, prescription drug order, or medication order, that: (A) contains information that identifies an individual; and (B) is maintained by a pharmacy or pharmacist." *Id.* § 551.003(10); *see also id.* § 562.102. Upon review, we agree Exhibit D consists of confidential prescription records that are subject to section 562.052. Accordingly, the OAG must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 562.052 of the Occupations Code.⁶

⁵We note this ruling does not affect an individual's right of access to his or her own medical records from the physician who provided treatment under the MPA, subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 159.004, .005, .006; *Tex. State Bd. of Pharmacy*, 391 S.W.3d 253.

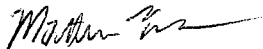
⁶We note this ruling does not affect a patient's right of access to the patient's own confidential record from the pharmacist or pharmacy who provided services under the Texas Pharmacy Act, subtitle J of title 3 of the Occupations Code. *See* Occ. Code §§ 562.052, .102; *cf Tex. State Bd. of Pharmacy*, 391 S.W.3d 253.

In summary, the OAG must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 1302(a) of title 42 of the United States Code and section 603.4 of title 20 of the Code of Federal Regulations. The OAG must withhold the FBI number it marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The OAG must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The OAG must withhold Exhibit C under section 552.101 of the Government Code in conjunction with the MPA. The OAG must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 562.052 of the Occupations Code. The OAG 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, 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/eb

Ref: ID# 776847

Enc. Submitted documents

c: Requestor
(w/o enclosures)