



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 20, 2019

Ms. Mollie Lerew
Assistant District Attorney
Wichita County Criminal District Attorney's Office
900 Seventh Street, Room 352
Wichita Falls, Texas 76301-2482

OR2019-23086

Dear Ms. Lerew:

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# 781431 (Ref. No. 1999).

Wichita County (the "county") received a request for a specified agreement with the United States Marshals Service (the "marshals service") and specified information pertaining to a type of individual during a specified time period. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ You also state you notified the marshals service of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.² See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

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 made confidential by other

¹ Although you also raise section 552.101 of the Government Code in conjunction with sections 181.001 and 181.101 of the Health and Safety Code, sections 602.001 and 843.007 of the Insurance Code, and 45 C.F.R. §§ 160 and 164, you make no arguments to support these statutes and regulations. Therefore, we assume you have withdrawn your claim that statutes and regulations apply to the submitted information. See Gov't Code §§ 552.301, .302.

² As of the date of this letter, we have not received any comments from the marshals service explaining why any portion of the submitted information should not be released to the requestor.

statutes, such as 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; Open Records Decision No. 598 (1991). 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 also 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 note Exhibit C was created by a nurse. The county must withhold Exhibit C under section 552.101 of the Government Code in conjunction with the MPA only if it was created under the supervision of a physician, or if it contains information taken directly from records created by or under the supervision of a physician. If the documents created by a nurse were not created under the supervision of a physician, or if they do not contain information taken directly from records created by or under the supervision of a physician, they are not subject to the MPA and the county may not withhold them under section 552.101 on that basis.

Section 552.101 of the Government Code also 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. Additionally, this office has concluded some kinds of medical

information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, we note some of the information at issue pertains to an individual who has been de-identified and whose privacy interests are, thus, protected. Upon review, we conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the county must withhold Exhibit C under section 552.101 of the Government Code in conjunction with the MPA if it was created under the supervision of a physician, or if it contains information taken directly from records created by or under the supervision of a physician. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must release the remaining information.³

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 781431

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the remaining information contains a social security number. 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. *See* Gov't Code § 552.147(b).