



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 6, 2019

Mr. Davis Woudwyk
Assistant Criminal District Attorney
Smith County
100 North Broadway, Fourth Floor
Tyler, Texas 75702

OR2019-24934

Dear Mr. Woudwyk:

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# 785187.

The Smith County Sheriff's Office (the "sheriff's office") received a request for medical records of a named prisoner. The sheriff's office claims either it is not required to release the submitted information pursuant to section 552.028 of the Government Code or the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the request for information because it does not consist of medical records. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office is not required to release this information in response to this request.

Section 552.028 of the Government Code provides in relevant part the following:

- (a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

...

(c) In this section, "correctional facility" means:

(1) a secure correctional facility, as defined by Section 1.07, Penal Code;

(2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and

(3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028(a), (c). Although the sheriff's office claims it is not required to accept or comply with the request for information, we conclude the sheriff's office has not established the requestor is requesting information on behalf of the incarcerated individual at issue. Thus, we find the sheriff's office has failed to demonstrate the request for information was submitted by an agent of an individual who is imprisoned or confined in a correctional facility. Accordingly, section 552.028 of the Government Code does not permit the sheriff's office to decline to comply with this request. Therefore, we will address the arguments of the sheriff's office to withhold the responsive information at issue under the Act.

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 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 find the submitted responsive information constitutes medical records. Accordingly, the sheriff's office must withhold the submitted responsive information under section 552.101 of the Government Code in conjunction with the MPA.¹

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/

¹This ruling does not affect an individual's right of access to a patient's medical records from the physician who provided treatment under the MPA. *See* Occ. Code §§ 159.004-.006; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide patients general right of access to their medical records from governmental body responding to request for information under the Act).

Ref: ID# 785187

Enc. Submitted documents

c: Requestor
(w/o enclosures)