



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 3, 2020

Ms. Jennifer Irlbeck  
Assistant District Attorney  
Lubbock County District Attorney's Office  
904 Broadway, Second Floor  
Lubbock, Texas 79401

OR2020-10278

Dear Mr. Irlbeck:

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# 820460 (ORR# 1910).

Lubbock County (the "county") received a request for information pertaining to a named individual. The county 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 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 section 611.002 of the Health and Safety Code, which provides, in part, as follows:

(a) Communications 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.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Upon review, we find pages 1, 3-4, and 8-12 of the submitted information

consist of mental health records that are subject to chapter 611 of the Health and Safety Code. Therefore, the county must withhold this information under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.<sup>1</sup> However, the remaining information is not subject to chapter 611 and the county may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also 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 some of the remaining information constitutes medical records. Accordingly, the county must withhold the remaining information under section 552.101 of the Government Code in conjunction with the MPA.<sup>2</sup>

In summary, the county must withhold pages 1, 3-4, and 8-12 under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The county must withhold the remaining information 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.

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<sup>1</sup> As our ruling is dispositive, we do not address the other arguments of the county to withhold this information.

<sup>2</sup> As our ruling is dispositive, we do not address the arguments of the county to withhold this information.

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/jlbm

Ref: ID# 820460

Enc. Submitted documents

c: Requestor  
(w/o enclosures)